

REPORTER'S RECORD

VOLUME 11 OF 25 VOLUMES

TRIAL COURT CAUSE NO. 800112

CHARLES MAMOU, JR. ) IN THE DISTRICT COURT

Appellant )

VS. ) HARRIS COUNTY, TEXAS

THE STATE OF TEXAS )

Appellee ) 179TH JUDICIAL DISTRICT

\*\*\*\*\*

VOIR DIRE EXAMINATION

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On the 20th day of September, 1999, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Bob Burdette, Judge Presiding, held in Houston, Harris County, Texas:

Proceedings reported by computer aided transcription/stenograph machine.

**FILED IN**  
**COURT OF CRIMINAL APPEALS**

MAR 21 2000

**ORIGINAL**

Troy C. Bennett, Jr., Clerk

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3

1 THE COURT: Do I understand there is an  
2 agreement by and between the parties of Venireperson No.  
3 103, that being Cynthia Kay Mills, the agreement of all  
4 concerned that she be excused.

5 MR. MCCLELLAN: Yes, Your Honor.

6 MS. CONNORS: Yes, Your Honor.

7 THE COURT: Mr. Wentz?

8 MR. WENTZ: Yes, Your Honor.

9 THE COURT: Mr. Wentz, is it Mr. Hills'?

10 MR. WENTZ: It is.

11 THE COURT: Mr. Mamou, is that your  
12 agreement?

13 THE DEFENDANT: It is.

14 THE COURT: Do you specifically request  
15 Miss Mills be excused?

16 THE DEFENDANT: Yes, sir.

17 MR. MCCLELLAN: We're also going to agree  
18 on 111.

19 THE COURT: And the same for Venireperson  
20 No. 111, that being Maria Elizabeth Brooks?

21 MR. MCCLELLAN: Yes.

22 THE COURT: Ms. Connors?

23 MS. CONNORS: Yes, sir.

24 THE COURT: Mr. Wentz?

25 MR. WENTZ: Yes.

5

1 7, 1998. We talked the other day about the fact that  
2 this being a capital murder case, it can come in two  
3 parts. The first part of the trial, the jury's only  
4 concern is going to be to decide whether the defendant  
5 is or is not guilty. If the defendant is not guilty,  
6 the case is over with.

7 If the defendant is found guilty, we come  
8 back and we can hear more evidence relating to the  
9 punishment phase of the trial. That's given to you for  
10 the purposes of assisting you in answering two questions  
11 or Special Issues that we very generally talked about  
12 last Friday. We're going to talk more about them today.

13 We're going to talk about a couple of  
14 other things this morning before we get started. And  
15 before we do get started, let me say this to you: I  
16 know this: We're going to talk about things that you  
17 have never in your life thought about before, and there  
18 is no reason that you ever should have. Because it's  
19 different, you may find it's very detailed; but please,  
20 don't get frustrated with me. Don't throw up your arms  
21 to yourself and say, I can't possibly do this. It's too  
22 hard. Because the truth of the matter is, it isn't.

23 Those things we're going to talk about  
24 today -- these rules we're going to talk about, if they  
25 do come into play, they're going to be given to you in

4

1 THE COURT: Is it Mr. Hills' request,  
2 also?

3 MR. WENTZ: Yes.

4 THE COURT: And yours?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You asking she be excused?

7 THE DEFENDANT: Yes, sir.

8 (Panel brought in.)

9 THE COURT: Good morning, ladies and  
10 gentlemen. You sound about as lively as I feel. We're  
11 going to spend some time talking about some things this  
12 morning that we didn't talk about the other day. And  
13 the reason we didn't talk about them the other day is,  
14 frankly, because we're going to be detailed enough. We  
15 could have made no headway dealing with sixty folks.

16 To remind you, this is a case the State of  
17 Texas versus Charles Mamou. Mr. Mamou is represented by  
18 his attorney, Mr. Kurt Wentz, who's present, and  
19 Mr. Wayne Hill, who is at the moment not with us. The  
20 State of Texas is represented by two of her Assistant  
21 District Attorneys, Mr. Lyn McClellan, Miss Claire  
22 Connors.

23 Mr. Mamou is charged by indictment with  
24 the offense of capital murder. It's alleged to have  
25 occurred in Harris County, Texas, on or about December

6

1 writing in the Court's charge. You're going to have the  
2 Court's charge with you back in the jury room during the  
3 whole time you're deliberating. So you're going to have  
4 in writing what we're talking about today, and there is  
5 no reason why you would have to feel like you have to  
6 memorize it. I'm just trying to give you an idea as to  
7 what can come about, kind of like forewarned is  
8 forearmed.

9 Past that, there is nothing complicated  
10 about it at all. But the idea is to give you as much of  
11 a comfort zone as I can possibly give you to let you see  
12 how these things can come into play and, in some  
13 instances, why they exist.

14 We talked the other day about the Court's  
15 charge. We talked about the fact that in the Court's  
16 charge -- at the conclusion of the evidence at each  
17 phase of the trial, the Court's charge will be given to  
18 you. And within the Court's charge will be all of the  
19 rules that will have come into play based upon whatever  
20 the testimony was that was presented in the case.  
21 Whether the rules themselves come into play will depend  
22 upon what portions of the testimony you view to be the  
23 credible portions, because we talked the other day about  
24 the fact that that's the jury's job.

25 You are the exclusive judges of the facts



7

1 proved, the credibility of the witnesses, and the weight  
2 to be given their testimony. My job has to do with  
3 listening to all of it and giving you the law that is  
4 brought into play as a result of the testimony that's  
5 presented. Out of all of that testimony that's  
6 presented you, you take that portion of it you view to  
7 be credible and take -- and extract out of the Court's  
8 charge the laws that are applied to the credible  
9 testimony as you see it. But within the Court's charge  
10 there are going to be lots of terms defined for you, and  
11 there are going to be some terms that are not going to  
12 be defined for you.

13 If you say to yourselves, well, how do you  
14 guys down here decide when you're going to define a word  
15 for us and when you're not. The answer to that question  
16 is perfectly simple. We have no justifiable reason to  
17 expect you to come down here knowing ahead of time what  
18 lawyering words are, and what they mean, and why we use  
19 them. So, those words we're going to define for you in  
20 the Court's charge. When we're dealing with words that  
21 aren't peculiar to the lawyering business, we're not  
22 going to define them; because you use those words all  
23 the time, so that's how we make that distinction. And  
24 we're going to talk about some of those words with each  
25 side.

8

1 We talked about the first phase of the  
2 trial, the focus of the evidence is going to be on the  
3 offense that was committed; the who's, the where's, the  
4 how's, the when's of the crime. Who did it? That's  
5 what you're going to hear at the first phase of the  
6 trial. If the jury finds the defendant guilty, at the  
7 second phase of the trial the focus of the evidence will  
8 shift; and it will get off the decision -- get off of  
9 the focus of who committed the crime. And instead, the  
10 focus will be on the person who did commit the crime.

11 So, at the second phase of the trial,  
12 basically you can hear about every single good thing  
13 some defendant's ever done before in his or her life.  
14 You could hear basically about every single bad thing.  
15 You take all that good stuff and all that bad stuff you  
16 hear at the second part of the trial, and you pile it  
17 onto all that information you heard about how the crime  
18 was committed in the first part of the trial, and you  
19 use every single bit of it to help you arrive at  
20 whatever decision you reach as to how those two  
21 questions, those two Special Issues, get answered.

22 Those questions are over here on the  
23 board. We're going to talk about it. If you need to  
24 look at it while we're talking about it, please do that.  
25 Question Number One that you'll be asked to answer in

9

1 the event the defendant is found guilty of capital  
2 murder is this: Do you find from the evidence beyond a  
3 reasonable doubt that there is a probability that the  
4 defendant would commit criminal acts of violence that  
5 would constitute a continuing threat to society? No  
6 matter what the case, no matter who the victim, no  
7 matter who the defendant, there is never but two  
8 possible answers to that question, either yes or no.

9 Question Number Two asks: Taking into  
10 consideration all of the evidence, including the  
11 circumstances of the offense -- that's going to be what  
12 you heard at the first part of the trial -- also  
13 including the character, the background, as well as the  
14 personal moral culpability or personal moral  
15 responsibility or involvement -- that's going to be what  
16 you heard at the second part of the trial.

17 So what you can see is the very first half  
18 of the second question instructs the jury to go back  
19 over all of the evidence in the case. That's all it  
20 says. Could have been a whole lot simpler to go back  
21 over all the evidence in the case. But we're lawyers.  
22 We didn't do it that way. For the purpose of asking  
23 yourself this question: Is there a sufficient  
24 mitigating circumstance or circumstances that make you  
25 think that a life sentence would be a more appropriate

10

1 verdict than a death sentence? Again, no matter what  
2 the case, no matter who the victim, there's not but two  
3 possible answers, yes or no.

4 If the jury should answer yes to that  
5 first question and if the jury should answer no to that  
6 second question, the law says that I have no choice, I  
7 have no option, no discretion. I must sentence the  
8 defendant to death. If the jury should answer those two  
9 questions in any way other than yes and no, in that  
10 order, for example, yes and yes, or no to the first  
11 question, then again, the law says I have no choice, and  
12 I have no option, and I have no discretion. I must  
13 sentence the defendant to life. And that's exactly what  
14 I'll do.

15 So, first off, you can see -- first off,  
16 you can see that juries don't sentence defendants in the  
17 State of Texas to life. Juries don't sentence them to  
18 death. What juries do is they answer two questions; and  
19 as a result of how you answer those questions, you are  
20 entitled to know what sentence the law requires. I know  
21 that you've seen and heard of capital murder trials  
22 where at the conclusion of them, sometimes a life  
23 sentence was imposed, sometimes the death sentence was  
24 imposed.

25 Every single case is different, kind of

11

1 like a fingerprint. We're different from "Perry Mason"  
2 shows and everything. Fingerprints, DNA now is a little  
3 more specific; but that's a new phenomenon. The  
4 fingerprint is the most reliable, specific, identifying  
5 feature that a person possesses. We all know that. No  
6 two people possess the same fingerprint. Every trial is  
7 also equally individualistic in that all defendants are  
8 always different. All offenses are always committed  
9 differently. All victims are always different. The  
10 witnesses who see things are always different. And the  
11 jurors that hear the testimony are always different.

12 For example, we could have in this  
13 courtroom four juries listening to exactly the same  
14 evidence at exactly the same time from exactly the same  
15 witnesses and go out in four separate jury deliberation  
16 rooms, and we can come up with four entirely different  
17 verdicts because of the way a jury reacts to the  
18 testimony of the witnesses, as well as the way the  
19 witnesses present the testimony.

20 So, that's why at the conclusion of some  
21 trials, these questions are answered in such a way that  
22 a life sentence is imposed. And that may very well be  
23 the most appropriate verdict in the world. Sometimes  
24 the questions are answered in such a way that a death  
25 sentence is imposed. And sometimes that may very well

13

1 defendant is found guilty of capital murder, obviously  
2 the presumption of being innocent has been erased by the  
3 quality of the strength of the State's evidence.

4 At the beginning of the second phase of a  
5 capital murder trial there is a whole new presumption  
6 that pops into place, and that new presumption is this:  
7 It is always presumed that the appropriate punishment  
8 for a person convicted of capital murder is life, unless  
9 the State's evidence proves beyond a reasonable doubt  
10 that the answer to this first question should be yes.

11 Now whenever we see the phrase, Do you  
12 find from the evidence beyond a reasonable doubt, that  
13 simply means the State's got to present proof to you to  
14 show what the verdict should be. In other words, the  
15 State's got to prove that the verdict should be bumped  
16 up a notch. The first phase of the trial, the jury's  
17 verdict starts off not guilty, unless the State's  
18 evidence shows beyond a reasonable doubt the defendant  
19 is guilty. And the evidence, therefore, bumps up a  
20 notch that verdict from not guilty to guilty.

21 Starting off at the second phase of the  
22 trial the answer to this question starts off being no,  
23 unless the State's evidence shows beyond a reasonable  
24 doubt the answer should be bumped up a notch, from no to  
25 yes. We understand already from our conversation this

12

1 be the most appropriate verdict for that specific,  
2 unique trial that's been had.

3 But the one constant, the standard that  
4 never changes is these questions, the order in which  
5 they're asked and the words that are contained within  
6 the questions. They never change. They are always  
7 exactly the same. The thing that causes a different  
8 result is the evaluation of the evidence that was  
9 presented during the course of a specific trial.

10 So, with that in mind, let's talk for just  
11 a couple of minutes about the questions themselves more  
12 specifically, talk about what they mean. Question  
13 Number One asks -- and it starts off with the phrase, Do  
14 you find from the evidence beyond a reasonable doubt?  
15 Understand, if you recall on Friday we talked about the  
16 term reasonable doubt. We defined it, and we talked  
17 about it Friday from the standpoint of that's how much  
18 evidence the State must present in order for the jury to  
19 find somebody guilty of the offense.

20 Starting out at trial, all defendants are  
21 starting out not guilty. They stay not guilty. They  
22 never change unless or until the evidence presented by  
23 the State rises to the level that it overcomes that  
24 presumption of innocence and persuades the jury beyond a  
25 reasonable doubt that the defendant is guilty. If a

14

1 morning that a no answer to that first question means a  
2 life sentence; because no to that first question is  
3 different than yes and no, in that order. There is no  
4 way -- after a no answer to that first question, that  
5 means you can't answer the second question in any way --  
6 that the death penalty will ever come back into play.

7 So, that's why it's presumed at the  
8 beginning of the punishment phase of a capital murder  
9 case that the appropriate verdict is life. Because it's  
10 presumed that the answer to that first question should  
11 be no. Obviously, that's a presumption that can be  
12 overcome by the quality of the State's evidence. But  
13 then again, there are cases where it's not overcome; and  
14 that presumption remains the result based upon the lack  
15 of quality in the State's evidence.

16 But the term beyond a reasonable doubt  
17 means the State's got to prove to you what the  
18 verdict -- what your verdict should be. If they don't  
19 prove it to you, your verdict is not guilty at the first  
20 phase. If they don't prove it, your answer to the first  
21 question is no at the second phase. Any questions about  
22 the term, Do you find from the evidence beyond a  
23 reasonable doubt? Okay. Again, that term will be  
24 defined for you in the Court's charge.

25 Do you find from the evidence beyond a

15

1 reasonable doubt there is a probability? Let's talk  
2 about the word probability, because that word is not  
3 going to be defined for you. The reason it's not going  
4 to be defined is because that's a word that we all use  
5 all the time; work, home, whatever we're doing. I am  
6 not permitted to define the term for you. I am,  
7 however, permitted by comparison to tell you what the  
8 word probability does not mean.

9

There are two things it cannot mean.

10

Whatever probability means to you, it must mean  
11 something more than a possibility. Anything could  
12 possibly happen. Because it could possibly happen does  
13 not mean it's probably going to. Whatever the word  
14 probably means to you, it cannot mean as much as a  
15 certainty; because something could possibly happen does  
16 not mean that it's certain to happen.

17

Now let's talk about the context within

18

which we're using this word probability. In order to  
19 get a yes answer to this question, the State's evidence  
20 must prove beyond a reasonable doubt the probability  
21 that a defendant would commit future acts of criminal  
22 violence. Can you see how grossly unfair it would be to  
23 the defendant if the State was only required to prove a  
24 possibility that a defendant would commit future acts of  
25 victim criminal violence? Because all of us could

16

probably do that.

2

On the other hand, can you see how grossly  
3 unfair it would be to the State to require them to prove  
4 to a certainty every criminal act of violence in the  
5 future? Because you can't ever prove that. So what we  
6 did was we simply split the baby, took the middle road,  
7 probability. If probability means to you something  
8 being more likely to happen than likely not to happen,  
9 that's a deal. If it means something different, that's  
10 just fine, too, as long as whatever probability means to  
11 you, it means something more than possibility, but not  
12 something as great as certainty. Any questions about  
13 the word probability?

14

Probability that the defendant would  
15 commit criminal acts of violence. In order to obtain a  
16 yes answer to this question, the State's evidence must  
17 show you beyond a reasonable doubt that the defendant on  
18 trial would commit criminal acts of violence in the  
19 future. Not a specific crime. They are not -- they,  
20 being the State -- are not required to show the  
21 existence of a probability that a defendant on trial  
22 would commit future capital murders.

23

Certainly, if that evidence exists, the  
24 State's entitled to present it to you. But the State's  
25 not entitled -- not required, I should say, to prove a

17

1 certain crime being committed in the future. They are,  
2 however, required to prove a certain category of crimes,  
3 that category being a crime that's a crime of violence.  
4 And as you can see by the question, the crime of  
5 violence can be either as to persons or as to property;  
6 because the question doesn't specify.

7

Certainly, capital murder is a crime of  
8 violence as to persons, as are murders, as are assaults,  
9 as are rapes, as are robberies, as are kidnappings. All  
10 criminal acts of violence as to persons. Criminal acts  
11 of violence as to property; arsons, the burning of  
12 somebody's building or automobile, certain kinds of  
13 burglaries that require breaking into to get into a  
14 building, into a house, the taking of a bat and beating  
15 the windshield in an automobile. All of those are  
16 criminal acts of violence as to property. And there  
17 are, I'm sure, hundreds more.

18

But it is that category of criminal  
19 conduct the State must prove the existence of the  
20 probability the defendant committed, not a specific  
21 crime within that broad category of conduct. And that  
22 category of conduct to that crime must rise to the level  
23 that it constitutes a continuing threat to do so.

24

Now the word society is not going to be  
25 defined for you. But I would ask you to consider making

18

1 a distinction, if you feel comfortable with a  
2 distinction, between the words community and society.  
3 We all live in different communities, but all of our  
4 communities are a piece of society. I say that for this  
5 reason: Sometimes when we think of the word society, we  
6 think ordinarily about the people with whom we have  
7 contact, with our neighbors, family, coworkers, people  
8 we see during the course of the day.

9

Ordinarily we don't think, for example,  
10 about people behind the walls of the penitentiary. But  
11 they also have the right to be free from criminal acts  
12 of violence. Because if they didn't, that would mean  
13 that the lady who teaches school to the inmates in the  
14 penitentiary system, and when she punches in at 8:00  
15 o'clock in the morning to go behind the walls to do her  
16 job for the day, if she successfully lives through the  
17 day and escapes with her life and punches out at 4:00  
18 o'clock, she doesn't reacquire her right to be free from  
19 criminal acts of violence from the outside after having  
20 lost them on the inside. That's preposterous, and  
21 that's not the case.

22

So the point is that the people inside the  
23 penitentiary system also have the right to be free from  
24 criminal acts of violence. We're talking about teaching  
25 people. We're talking about medical personnel. We're

19

1 talking about prison officials, wardens, administrators,  
2 guards, whoever they might be. And we're also talking  
3 about inmates; because we hope that the accomplishments  
4 of the prison system might be rehabilitation. Obviously  
5 that's never going to happen if the inmates aren't  
6 entitled to be free, also, from criminal acts of  
7 violence.

8 So we know we're not talking about a  
9 community. We're talking about something larger than  
10 that. Because if we were talking about a community,  
11 that question would read, Criminal acts of violence that  
12 would constitute a continuing threat to the citizens of  
13 Harris County, Texas. And it doesn't say that. It says  
14 to society. So within this context, the word society  
15 could mean all the people all the time in all the  
16 places. That's the first question that you'll be asked  
17 to answer if the defendant is found guilty of capital  
18 murder. Does anybody have any questions about the first  
19 question?

20 Okay. Next we'll go to Question Number  
21 Two. Before we get to Question Two, let's think for  
22 just a second about where a jury would necessarily have  
23 to be. This is to say, what would they necessarily have  
24 had to have done in order to get to the second question?  
25 Well, first off, necessarily the jury would have had to

20

1 have found the defendant guilty of capital murder.  
2 Because if they had not, we would never get to these  
3 questions.

4 Secondly, necessarily, a defendant -- a  
5 jury would have had to have answered unanimously  
6 Question Number One yes. Because if they had answered  
7 no, we know we wouldn't get to the second question;  
8 because a no answer to the first question is a life  
9 sentence. So, what we're saying when a jury gets to the  
10 second question is this: The jury necessarily would  
11 have had to have consistently and unanimously voted in  
12 such a way that the defendant's going to get the death  
13 penalty, unless the jury determines that because of some  
14 unique feature that exists within the case, if there is  
15 one, that unique feature rises to the level that makes  
16 you think that you should pull down the death penalty  
17 and substitute in its place a life sentence.

18 If that feature exists, the second  
19 question is where you handle it. We talked about the  
20 question. We talked about the first half of the second  
21 question. It's just simply an instruction to the jury  
22 to go back over all the evidence in the case for the  
23 purposes of asking yourselves -- and these are my words,  
24 not words of the questions. What the question is asking  
25 is this: Is there a sufficient reason in this case, is

21

1 there a good enough reason, why a life sentence instead  
2 of the death sentence should be imposed. Because the  
3 death sentence is going to be imposed, because you found  
4 him guilty of capital murder and you found he's a future  
5 danger. So he's on his way to getting a death penalty  
6 unless you pull it down.

7 Now, let's talk about the question more  
8 specifically. As you see in the second question, there  
9 is no phrase, Do you find from the evidence beyond a  
10 reasonable doubt? That phrase does not exist within  
11 that question, so that means the State does not have to  
12 prove to you what the answer to that question should be.  
13 Well, we know from our conversation the other day that  
14 the defendant never has to prove anything because he's  
15 the defendant.

16 So if the State doesn't have to prove to  
17 you what the answer to that second question should be  
18 and they don't answer -- I don't know what I said. I  
19 said if the State doesn't -- that's what I meant to say.  
20 The State doesn't have to prove to you what the answer  
21 to the second question should be. And if the defendant  
22 doesn't have to prove to you what the answer to that  
23 second question should be and they don't, where does  
24 that leave us?

25 Well, that leaves us in the posture of

22

1 understanding that the law recognizes that there might  
2 be many cases where there is no reason in the case why a  
3 death sentence should be taken down and a life sentence  
4 substituted in its place. And we understand the law  
5 recognizes that, because nobody is required to put that  
6 reason in the case. The only requirement presented by  
7 the second question is that the jury go back over the  
8 case to reevaluate all the information to determine  
9 whether there is or is not a sufficient reason why a  
10 life sentence should be imposed as opposed to a death  
11 sentence.

12 Now we use the word in the second  
13 question, mitigating. The word mitigating is not going  
14 to be defined for you. The reason it's not going to be  
15 defined for you is because what it might mean to one  
16 juror, it might mean exactly the opposite to another  
17 juror. That's your call.

18 For example, sometimes in some cases some  
19 folks might tend to think that if you have a defendant  
20 on trial who is seventeen years old, that the  
21 comparative youthfulness of the defendant on trial might  
22 be mitigating in the sense that he has a lack of mature  
23 judgment, unable to make decisions as maturely as people  
24 older would.

25 Some people hearing exactly that same

23

1 evidence might say, I don't agree with that; because  
 2 anybody who's seventeen that commits a crime that bad at  
 3 that early age, we've lost them anyway. Two people  
 4 looking at exactly the same evidence and coming up with  
 5 the same conclusion. You might have in some  
 6 hypothetical case testimony about perhaps a  
 7 defendant's -- there being a history of mental  
 8 retardation. Sometimes some folks might think mental  
 9 retardation would be mitigating. Other people might  
 10 not, their idea being there is no way to cure mental  
 11 retardation. It is the way it's always going to be  
 12 forever. Another group of people in that same jury  
 13 might say, Wouldn't it depend on how severe the  
 14 retardation was? Was it minimal? Was it significant?  
 15 Would it make a difference as to why a life sentence  
 16 should be given as opposed to a death sentence? That's  
 17 your call.

18 But what I'm getting at is the same  
 19 evidence can be viewed by opposite ends by the people on  
 20 the jury. So for that reason, the word mitigating is  
 21 not going to be defined. But when we talk about  
 22 mitigating, as we're using in this second question,  
 23 we're just talking about reducing the punishment from  
 24 death to life. We're not talking about excusing  
 25 conduct. We're not talking about justifying conduct.

24

1 Obviously the conduct wasn't justified,  
 2 wasn't excused; because you found him guilty of the  
 3 offense, and the very least that's going to happen is  
 4 he's going to get a life sentence. Mitigating evidence  
 5 might also be, a jury might find something to be  
 6 mitigating as to have specific circumstances or traits  
 7 within a defendant's character.

8 You might find a week before the defendant  
 9 was -- the capital murder was committed, the defendant  
 10 on trial was driving down the street, saw an apartment  
 11 fire, stopped his car, ran inside and saved a couple of  
 12 people at the risk of his own life. You might find that  
 13 to be mitigating to such a degree that it warrants  
 14 thinking of considering a life sentence should be  
 15 substituted as opposed to a death sentence.

16 You might, in other cases, have testimony  
 17 about somebody being a perfectly marvelous citizen  
 18 before they went into the service. They went to  
 19 Vietnam, went to Desert Storm, got all screwed up, and  
 20 never been able to get their lives back again as a  
 21 result of having served their country. Sometimes people  
 22 might think that's mitigating to the degree that it  
 23 warrants a life sentence. Others might not.

24 The point being, it's not important how  
 25 you evaluate the evidence; but the commitment we need to

25

1 get from you is you will go back over all of the  
 2 evidence and look at it from the standpoint of asking  
 3 yourself, is there a feature that exists within this  
 4 case to a sufficient degree that it's unique enough to  
 5 make me think a life sentence would be more appropriate  
 6 than a death sentence. If your answer to that question  
 7 is yes, then your answer to that whole question is yes.  
 8 If your answer to the question is no, then your answer  
 9 to that whole question is no. That's the second  
 10 question. Does anybody have any questions about the  
 11 second question?

12 Let me say this to you, and I'm going to  
 13 try for just a second to put myself into your shoes.  
 14 And now knowing what it is we know, my question to  
 15 myself, if I were in one of your chairs, would be this:  
 16 Let's see if I got this right. If the State proves  
 17 beyond a reasonable doubt the defendant's guilty of  
 18 capital murder, then it's my job to find him guilty.  
 19 And that's -- what if the State's job is to prove beyond  
 20 a reasonable doubt that the answer to Special Issue  
 21 Number One should be yes, and if I find they have proved  
 22 that and I answer that question yes, that means I have  
 23 found a defendant guilty of having committed a horrible  
 24 crime. That means I also find the defendant's a future  
 25 danger. And you're still telling me that even though I

26

1 make those two findings, it might not be proper in a  
 2 case for the death penalty to be imposed. And the  
 3 answer to that question is, yes, it might not be.  
 4 Because you have to take the second question into  
 5 account, too.

6 Now whether you do find in a given case  
 7 that there is any mitigating evidence, there can be --  
 8 maybe there is; maybe there is not. The next thing is  
 9 if there is -- maybe you'll find that that mitigating  
 10 evidence is not sufficient to combat or to overcome all  
 11 the evidence that you heard to find a person guilty and  
 12 all the evidence you heard to answer Question Number One  
 13 yes. That may very well be the case. But the only  
 14 commitment that we're entitled to get from you is that  
 15 you will give legitimate consideration to the second  
 16 question, go back and look over all the evidence in the  
 17 case, see what there is or what there isn't.

18 The other night there was a deal on  
 19 television about Yogi Berra. It ain't over till it's  
 20 over. And when you get through with Question Number  
 21 One, it ain't over. It's not over till you get through  
 22 with Question Number Two. Because these three decisions  
 23 that you will make -- that being, is he guilty? The  
 24 answer to Question One and the answer to Question Two,  
 25 those three decisions, in my mind, are kind of like the

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1 three points of a trial.

2 Every piece of information you're going to  
3 use to make your decision as to those three questions  
4 comes from the evidence within that trial, but each  
5 question is being asked of you from such a different  
6 perspective that every time you're asked a question, you  
7 have to go back into that body of evidence.

8 What I'm saying is, no matter how you  
9 answer one question, that answer to that question does  
10 not dictate what the answer to the next question should  
11 be; because is he guilty is a whole different question  
12 than is he a future danger? And is he a future danger  
13 is a whole different question than is there some unique  
14 reason in this case why a life sentence should be  
15 imposed as opposed to a death sentence? So, each of  
16 those three questions is completely independent from the  
17 other. And that's why we have to wait till we get all  
18 the way to the end, through the second question being  
19 answered, before we know what the appropriate verdict  
20 should be in the case.

21 So, what I'm saying is -- or what I'm  
22 hoping is that I have conveyed the understanding that  
23 even though a capital murder verdict is returned by a  
24 jury, even though a yes answer is returned by a jury to  
25 Question Number One, that does not foreclose the

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1 possibility that a life sentence may be the appropriate  
2 verdict based upon some unique aspects that may exist in  
3 the case. And if it doesn't exist, obviously a life  
4 sentence is not appropriate; but if it does exist, a  
5 life sentence is appropriate.

6 And this second question is just simply  
7 the jury's way to have the opportunity to satisfy  
8 themselves that the death penalty really is the verdict  
9 we want to return in this case. And if the death  
10 penalty is the verdict that you want to return, your  
11 answer to that second question is no. If the death  
12 penalty is not the verdict you want to return, you  
13 answer that second question yes. And either answer, yes  
14 or no, must be based upon the evidence that exists in  
15 the case. Anybody have any questions about that?

16 Okay. The possible punishments, life and  
17 death. We know what death is. No reason to go into  
18 that. But sometimes we have a misunderstanding. Some  
19 folks have a misunderstanding about what a life sentence  
20 means. I will tell you in this case, in the event these  
21 questions -- in the event he's found guilty of capital  
22 murder, and in the event these questions are answered in  
23 such a way that a death sentence -- I'm sorry -- these  
24 questions are answered in such a way that a life  
25 sentence is imposed.

29

1 The law says that the defendant cannot  
2 be -- this defendant, in this trial, cannot become  
3 eligible for parole consideration until he has actually  
4 served forty years in the penitentiary. Forty years  
5 means forty years, day for day, week for week, month for  
6 month, year for year. Forty years in this case means  
7 2039, the Year 2039. What happens at the conclusion of  
8 forty years? Frankly, it's anybody's guess.

9 But at the conclusion of forty years, that  
10 is the first time that the defendant would become  
11 eligible for parole consideration. Eligibility for  
12 parole consideration has absolutely nothing to do with  
13 determining or deciding whether parole will be or will  
14 not be granted. Eligibility for parole consideration  
15 simply means that there will be evaluations made by  
16 prison people evaluating that person's forty-year stay  
17 with them.

18 Those evaluations will be sent to the  
19 Board of Pardons and Paroles, made up of whoever they're  
20 going to -- where it's going to be made up at that time.  
21 The Board of Pardons and Paroles can accept those  
22 evaluations. They can completely reject them and come  
23 up with their own recommendations. They will send their  
24 recommendations to the governor of the State of Texas,  
25 whoever he or she is in 2039. And the governor of the

30

1 State of Texas will make a decision, accepting the  
2 evaluations, the recommendations, rejecting them and  
3 coming up with a political decision. Don't know what  
4 will happen.

5 The point being that these two questions  
6 deserve to be answered on the basis of the evidence  
7 contained within the case on trial in 1999. They are  
8 not to be answered on the basis of speculating as to  
9 what might happen in the Year 2039. It is perfectly  
10 consistent with the notion that in 2039, one  
11 hypothetical defendant who got a life sentence for  
12 capital murder may very well spend the rest of his  
13 natural life drawing every single breath he ever drew  
14 after the conclusion of forty years in the penitentiary  
15 and dies there. That's perfectly possible.

16 It's also possible that another defendant,  
17 at the conclusion of forty years, would be considered  
18 for parole eligibility and be granted parole. Don't  
19 know what's going to happen in this case. But as I  
20 said, eligibility for parole does not have anything to  
21 do with whether parole will or will not be granted. It  
22 just becomes a time when the evaluation process begins.  
23 But I did want you to know what the rule is about how  
24 long the defendant would be required to stay in the  
25 penitentiary.

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1 That forty-year period cannot be used to  
2 answer these questions. These questions must be based  
3 upon the evidence in the case. But I did not want to  
4 run the risk that somebody on a jury might say to  
5 themselves or to other jurors in the jury room, well, I  
6 understand that people who get life sentences can be  
7 paroled after forty years -- I mean, paroled after five  
8 years; therefore, I'm never going to answer these  
9 questions in such a way that a life sentence is imposed.  
10 I'm going to always answer in such a way the death  
11 penalty is imposed, because I'm not going to run the  
12 risk of having them back in five years. I'm telling  
13 you, there is no risk. It's simply not going to happen.  
14 Now anybody have any questions about that?

15 Okay. Let's get off the capital murder  
16 business for just a second, and let's get on to a couple  
17 of other things briefly. First off, we're talking about  
18 capital murder. And capital murder -- I say we're going  
19 to get off it. Now I'm talking about it, using this as  
20 a starting point. Capital murder necessarily means the  
21 intentional taking of the life of another human being  
22 without there being any legal excuse or without there  
23 being any legal justification and that it was committed  
24 during the course of another major felony.

25 In this case the allegation is a

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1 kidnapping, and there is a second allegation of  
2 murdering two people during the course of the same  
3 criminal transaction; so, a murder during a murder; a  
4 murder during a kidnapping. Those are two major  
5 felonies, an intentional taking of the life of another  
6 human being without any legal justification or excuse,  
7 during a kidnapping or another murder.

8 If the State proves beyond a reasonable  
9 doubt the existence of each of those features, the  
10 intentional murder and the other felony, the jury's  
11 obligation is to find the defendant guilty of capital  
12 murder. Anytime the State's required to prove three  
13 things -- anytime the State's required to prove the  
14 existence of two things, three possible outcomes can  
15 occur.

16 Possible outcome number one is they can.  
17 If they do, the jury's got to find the defendant guilty  
18 of capital murder. Possible outcome number two, they  
19 can't prove either one of them. If that's the case, the  
20 jury's obligation is to find the defendant not guilty.  
21 Possible outcome number three, they can prove the  
22 existence of the intentional murder without  
23 justification or excuse, but they can't prove in the  
24 jury's mind that it was committed during the course of  
25 the kidnapping, for example.

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1 If that were to be the case, I'd be  
2 obligated to give you a third possible verdict. You  
3 would have had guilty of capital murder. You would have  
4 had not guilty of anything. Third possible verdict is  
5 guilty of murder. So what we're talking about is an  
6 intentional murder, taking the life -- intentionally  
7 taking the life of another human being without there  
8 being any legal justification or any legal excuse, which  
9 is exactly the definition for capital murder, except in  
10 the murder it's not done during the course of another  
11 felony as it is in the capital murder.

12 So capital murder is the greater of the  
13 crime, and we're talking about carving out a lesser  
14 crime. That being a murder being carved out of an  
15 allegation of capital murder, piece of the pie out of  
16 the whole pie. And when we talk about the intentional  
17 taking of the life of another human being without there  
18 being any legal justification, without there being any  
19 legal excuse, we are never talking about self-defense;  
20 because self-defense is a legal justification. It is  
21 simply not murder. We are not talking about accident,  
22 because accident isn't intentional. So if you think of  
23 those two things, those two things are not and can never  
24 be murder; because there is a legal justification and  
25 it's not intentional.

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1 But at any rate, we know the range of  
2 punishment for the person convicted of capital murder is  
3 life and death. The range of punishment for murder is  
4 something more broad. A person convicted of the offense  
5 of murder in the State of Texas can be punished by  
6 confinement in the penitentiary for life or by  
7 confinement in the penitentiary for any number of years,  
8 as long as that number is not less than five or not  
9 greater than ninety-nine. And in addition to the  
10 confinement, a fine not to exceed \$10,000 could also be  
11 imposed by a jury.

12 But you can see that the range of  
13 punishment is simply so remarkably broad. And as I said  
14 the other day, I know that most of you are concerned of  
15 what you think goes on at the courthouse or what you  
16 hear on television. And if you hear about a murder,  
17 there is a specific thing that comes into your mind.  
18 And it possibly is an absolutely awful, horrible,  
19 heinous offense. And certainly, those do exist. But  
20 they aren't all of the same magnitude.

21 We are not going to be of the mind to tell  
22 you -- ask you to give up your time, ask you to serve as  
23 jurors, and then tell you exactly what the value is for  
24 every dead body that turns up in Harris County, Texas.  
25 Because the values are all different. And they're



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1 different because of the circumstances of the offense.  
2 They're different because of the quality of the life of  
3 the victim. And they're different because of the  
4 quality of the life of the defendant.

5 You might have exactly the same set of  
6 circumstances. I mean, precisely the same crime,  
7 precisely the same witnesses. One crime is committed by  
8 a forty-five-year-old, six-time ex-convict, who the  
9 evidence showed you during the course of the trial makes  
10 his life as a career criminal. The other crime you  
11 might see being committed by a seventeen-year-old girl,  
12 who has never before been in any trouble before in her  
13 life and just goes out and does something in aberration  
14 to the way she's lived her whole life.

15 Maybe you would think those two crimes  
16 should be punished differently. Maybe you wouldn't,  
17 either. But that's your call. But if you did think so,  
18 we've got to give you the room so you can run up and  
19 down the scale of punishment. The facts of a different  
20 case ought to be in terms of punishment.

21 You might have, for example, an  
22 eighty-five-year-old couple, married for fifty years.  
23 The Mrs. is critically ill. She's on life support.  
24 She's not going to live. He knows it. Her husband  
25 knows it. She talks to him. She doesn't want

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1 something -- she certainly doesn't want to go through  
2 the indignity to have her life supported by mechanical  
3 means, and she talks to her husband. Please fix this.  
4 He prays and talks to the preacher and frets about it  
5 several days. Finally, not wanting to watch his wife go  
6 through this misery, this indignation any longer, he  
7 goes across, pulls the plug, and she dies.

8 Without going into the morality of that,  
9 in this state that's murder. That's the intentional  
10 taking of the life of another human being without there  
11 being any legal justification and without there being  
12 any excuse. Now maybe that's not the kind of case  
13 wherein you think that seventy-five-year-old man should  
14 get a life sentence, because he didn't kill her out of  
15 anger, not out of hate, not out of revenge. He actually  
16 did this out of love. The point being, if you didn't  
17 think the crime in that specific instance was worth a  
18 life sentence, we've got to make room for you to go up  
19 and down the scale of punishments to where we let you  
20 take the evidence to where you think it should be on  
21 that scale.

22 So, that's why the range is so broad, to  
23 give the opportunity to let you arrive at the punishment  
24 you think is appropriate, depending upon the  
25 circumstances of the offense, and the character and

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1 background of the defendant, as well as the victim. So,  
2 my question to you is this: Imagine, if you would, that  
3 you're a juror in some imaginary capital murder case.  
4 And your jury has heard all of the evidence about the  
5 crime itself, first phase of the trial. And your jury  
6 goes out and deliberates, and your jury unanimously  
7 determines that the defendant on trial is not guilty of  
8 capital murder. But your jury unanimously agrees that  
9 the defendant is, in fact, guilty of murder.

10 Your jury comes back to the second phase  
11 of the trial, and you hear additional evidence about the  
12 character and background of the defendant on trial,  
13 whatever that evidence was. And you go out and you  
14 deliberate as to what should be the appropriate  
15 punishment. My question to you is this: Is there  
16 anybody here who would not consider in that imaginary  
17 case assessing that imaginary defendant's punishment at  
18 confinement in the penitentiary for life if you thought  
19 based upon whatever the evidence was in that particular  
20 case, that that was the right result to reach? Is there  
21 anybody here who -- I guess what I'm saying is, is there  
22 anybody here who would refuse to consider life as an  
23 appropriate sentencing option if you thought the facts  
24 of the case warranted it? I see no indication to the  
25 contrary, so I'm going to assume you can consider that.

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1 Take the same question and flip it around.  
2 Capital murder jury finds the defendant -- unanimously  
3 finds the defendant not guilty of capital murder, but  
4 you can unanimously determine the defendant's guilty of  
5 murder. You come back and hear the second phase of the  
6 trial, again, relating the character and background of  
7 the defendant on trial, whatever that evidence was.  
8 Your jury goes out. Is there anybody here who could not  
9 consider assessing that imaginary defendant's punishment  
10 at confinement in the penitentiary for five years if you  
11 thought, based upon the uniqueness of the evidence that  
12 existed in that particular case, that that was the right  
13 result to reach?

14 Again, is there anybody who would refuse,  
15 before the trial ever began, to consider five years as a  
16 legitimate sentencing option if the circumstances of the  
17 case made you believe it was the appropriate option? I,  
18 again, see nothing to indicate that you wouldn't. So  
19 the point of it, you could consider the whole range of  
20 punishment. It's the same thing we've been asking about  
21 the capital murder business. Can you consider the whole  
22 range of punishment? Can you consider yes and no  
23 answers? Can you consider guilty or not guilty?

24 Whatever result you reach, would you reach  
25 that result because, in your opinion, after having heard



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1 all the evidence, that's where that evidence led you, to  
2 that result, and not because before the trial ever began  
3 you had an opinion as to what result you were going to  
4 reach? That's all we're trying to talk about, is  
5 starting the case off at ground zero and you go wherever  
6 the evidence takes you. Anybody have any questions so  
7 far?

8

10 Two other quick things. One thing -- and  
11 I'm not going to do this from a legal standpoint. I'm  
12 trying to convey the thought of a concept. We have in  
13 the State of Texas a concept, a piece of our law that  
14 says, if you have two or more people who get together,  
15 agree, conspire to commit a crime; and they do commit  
16 the crimes. A conviction as to one of those  
17 coconspirators cannot be had solely and exclusively upon  
18 the testimony of one of the other coconspirators.  
19 Instead, there must be some additional evidence from  
20 some independent source, independent of the  
21 coconspirators, that tends to connect the defendant on  
22 trial to the commission of the offense. The independent  
23 evidence itself does not have to be within itself  
24 sufficient to prove the defendant's guilt beyond a  
25 reasonable doubt. It only has to be sufficient that it  
tends to connect the defendant to the commission of a  
crime.

40

1 For example, another guy and I agree to  
2 rob a bank. I'm going to be the driver of the getaway  
3 car, and he's the bank robber. I pull up, he gets the  
4 bag, runs in, comes out, hops in the car, off we go.  
5 Well, there is an arrest that occurs. I got this all  
6 planned. I didn't go in the bank, so nobody can  
7 identify me. He gets arrested. He starts to point to  
8 me. I'm not the only -- I can't be convicted solely and  
9 exclusively upon that testimony if there is no other  
10 evidence independent of him that tends to connect me to  
11 the commission of a crime. But because he is arrested,  
12 they find the bank bag; and on the bank bag are my  
13 fingerprints. That is evidence independent of his  
14 testimony that does tend to connect to the commission of  
15 the crime. So, it could be eyewitness evidence; it  
16 could be circumstantial evidence. It doesn't make any  
17 difference, just some evidence independent of the  
18 evidence -- the coconspirators' testimony that tends to  
19 connect me to the crime that was committed. Anybody  
20 here have any disagreements with that aspect of the law  
21 that rises to the level -- and I don't know if it's  
22 going to come into play, but -- I don't have the  
23 faintest idea -- but I know the law exists and it could.  
24 Anybody have any disagreement with that facet of our  
25 law?

41

1 One last area. We have two kinds of  
2 evidence that exist in trials. We have direct evidence,  
3 and we have circumstantial evidence. Direct evidence  
4 means eyewitness testimony; somebody saw something  
5 happen. Or in a criminal case it could also mean the  
6 confession of a defendant, and we know the defendant  
7 can't be required to testify against himself. But there  
8 are some instances wherein a confession, if lawfully  
9 taken, can be admitted.

10

11 Circumstantial evidence means any other  
12 kind of evidence. It means evidence of a particular  
13 circumstance involved in conduct, taken and intertwined  
14 with other circumstances presented to a jury, would be  
15 sufficient to establish a defendant's guilt. Sometimes  
16 we hear people say down here, oh, I couldn't find  
17 anybody guilty on circumstantial evidence. And they  
18 really don't know what it is they're saying.

19

20 The law doesn't care whether evidence in a  
21 case is circumstantial or direct. The law only cares  
22 that the evidence rises to the level that it proves a  
23 person's guilt beyond a reasonable doubt. The law  
24 doesn't care whether there is one witness in a case or  
25 twenty-seven witnesses in the case. The law only cares,  
does that witness or do those witnesses' testimony show  
a person's guilt beyond a reasonable doubt?

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1 Every week in this building there are  
2 people who are found guilty based upon the testimony of  
3 one witness. And when that happens, that's because that  
4 one witness' testimony is believed beyond a reasonable  
5 doubt. And there are weeks in this building where  
6 defendants are found not guilty, even upon the testimony  
7 of a half a dozen eyewitnesses, because the jury does  
8 not believe beyond a reasonable doubt those  
9 eyewitnesses' testimony. So, the number of witnesses  
10 makes no difference. Whether it's direct or  
11 circumstantial evidence makes no difference. It is the  
12 quality of the testimony; and thus, it establishes a  
13 person's guilt beyond a reasonable doubt.

14

15 For example, down here next to where  
16 they're building the Enron Field, we could have two  
17 drunks out there one day just on the verge of passing  
18 out. And they see some old guy down there, and somebody  
19 shoots him and kills him. They drag those three drunks  
20 into trial. Six months later they testify, and they all  
21 testify exactly what it was they claim they saw. And  
22 each one of them is perfectly honest. They say, I've  
23 been drinking wine all day. I'm on my third paper bag,  
24 and I'm getting ready to pass out, and I'm drunker than  
25 Cooter Brown, but that's what I saw. Can you see how a  
jury may very well not find beyond a reasonable doubt

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1 those witnesses to be credible? They may find that  
2 hypothetical defendant not guilty, even though the  
3 testimony was direct, even though it came from three  
4 eyewitnesses.

5 On the other hand, at exactly the same  
6 time, same circumstance, you have one guy who's a pillar  
7 of the community, who happens to be walking by and sees  
8 the person who turns up being the defendant with a gun  
9 in his hand. He doesn't see him do anything. He walks  
10 away, and fifteen seconds later he hears a gunshot.  
11 Another guy, also a pillar of the community, hears the  
12 gunshot, turns around, doesn't see it fired but sees the  
13 victim laying on the ground, sees the defendant standing  
14 over the victim with a gun in his hands. A third person  
15 doesn't see the shooting, either, but sees -- about  
16 fifteen seconds after he hears the gunshot, sees the  
17 defendant walking away with a gun in his hands, calls  
18 the police. The police arrest the defendant. Nobody  
19 has seen the gunshot fired, and the gun that is seized  
20 from the defendant at the time of his arrest is  
21 ballistically determined to have been the weapon that  
22 fired the projectile that went in the body of the victim  
23 to cause his death. Nothing but circumstantial  
24 evidence. But can you see how someone might view that  
25 evidence in such a way that it would, beyond a

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1 reasonable doubt, show the defendant on trial to be  
2 guilty? No eyewitness testimony, but circumstantial.  
3 We think of fingerprints as being such great  
4 identifiers, and certainly they are. But fingerprints  
5 are circumstantial evidence; because even if a  
6 fingerprint exists on some object, there is no way to  
7 know when the print was placed there. There is no way  
8 to know when the object -- when the print was placed  
9 there.

10 Now if it's a nonmoveable object,  
11 obviously that's not going to be hard to figure out.  
12 But if it were a pistol, you would never know where the  
13 pistol was or when it was that the person's print was  
14 placed on that pistol. That's why it's circumstantial.  
15 But my question to you is this: If you were a juror in  
16 some hypothetical capital murder case, and at the  
17 conclusion of all the evidence in the case -- and let's  
18 just say for purposes of this conversation, all the  
19 evidence was circumstantial -- is there anybody here who  
20 would refuse to find the defendant on trial guilty of  
21 capital murder just because the evidence was  
22 circumstantial and not direct, even though you believe  
23 all that evidence beyond a reasonable doubt? Is there  
24 anybody here who would refuse to do that?

25 Okay. You've just finished your first

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1 year in law school. Anybody have any questions? The  
2 whole point of this exercise is really pretty simple.  
3 One, we want to run the laws by you, the rules by you  
4 that can come into play; because we're going to want to  
5 see if you were a juror in the case, could you, A,  
6 follow the rules, and B, enforce them? Because that's  
7 what you'd have to do as a juror. Anybody here who's  
8 heard anything that causes them such a degree of  
9 discomfort that they would be unwilling, unable to  
10 follow any of these rules we talked about?

11 Second aspect of what this is about, I  
12 think, is for you to be satisfied with yourself, for the  
13 lawyers to be satisfied with you, that if you were a  
14 juror in the case, you could take one of those chairs in  
15 the jury box and just listen to all the information as  
16 presented, evaluate it however you see fit, and come up  
17 with what you think is the right decision to reach based  
18 upon the evidence in the case and how you evaluate it.  
19 Is there anybody here who feels as though they couldn't  
20 do that? Anybody have any questions?

21 Okay. If you would, retire to the  
22 hallway. We'll bring you in one at a time and get you  
23 on your way as quickly as we can.  
24  
25

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1 GLEN DINKINS,  
2 having been first duly sworn, testified as follows:  
3 VOIR DIRE EXAMINATION

4 BY THE COURT:

5 Q. Mr. Dinkins, first off, going back to Friday  
6 and this morning, about everything we talked about up to  
7 now, do you have any questions at all for me?

8 A. I believe not.

9 Q. Okay. Is there anything to this point that we  
10 have not yet addressed that you feel as though we should  
11 talk about it because it might have some bearing on your  
12 service as a juror in this case?

13 A. Not that comes to mind right now.

14 Q. Is there anything at all, sir, that you're  
15 aware of presently about your personal life, your  
16 professional life, your health, or anything else for  
17 that matter, that you can think of that would in any way  
18 interfere with your ability to be a juror in this case  
19 during the time frame we've discussed?

20 A. If it's like ten days, is that what you're  
21 saying?

22 Q. We're saying more than five, but not as much as  
23 ten.

24 A. I don't believe so.

25 Q. The idea that I was trying to convey about how

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1 each of the juror's verdicts is independent from the  
2 other verdicts. Does that make sense in any way?

3 A. Yes, sir.

4 Q. Each thing must be viewed on the basis of its  
5 own question that it's asking. And can you conceive --  
6 and I'm not going to ask you to tell me what they might  
7 be. That's not fair to you. But are you open to the  
8 notion that even though a juror found a defendant guilty  
9 of capital murder, for example, and even though a juror  
10 may have answered yes to Question Number One, that is to  
11 say, found the defendant to be a future danger, that  
12 there may very well be circumstances that do exist  
13 wherein that same juror in that same case would believe  
14 there was a sufficient reason to answer that second  
15 question yes, therefore, giving a defendant a life  
16 sentence as opposed to a death sentence?

17 A. Yes, I believe that possibility exists.

18 Q. And you would be willing to search through the  
19 case to see if that existed in a case if you were a  
20 juror?

21 A. Yes.

22 Q. Before we begin, have you any questions for me?

23 A. Not right now.

24 Q. Thank you, sir.

25 THE COURT: Miss Connors.

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1 a reasonable doubt that there is a probability that the  
2 defendant would commit criminal acts of violence that  
3 would constitute a threat to society?

4 Just because you found him guilty of  
5 capital murder, it doesn't mean this question is  
6 automatically answered yes. Okay. There may be  
7 circumstances where you think that person -- you hear  
8 facts when they were violent between -- with someone  
9 they knew. That was the only time they were ever  
10 violent in their life, and you may believe they would  
11 never commit some type of violent act in the future.  
12 Okay. And you understand the acts of violence could be  
13 either against property or some type of burglary,  
14 violence against a person. If I punch you, that would  
15 be a type of violence. So if you answer that question  
16 yes, then he gets the death penalty. All right?

17 The way to get around that is you go to  
18 Question Number Two. You can decide, I don't want him  
19 to get the death penalty, and you answer that  
20 question -- if there was sufficient evidence, you answer  
21 that question no. Okay. But before you would do that,  
22 you have to look at all the evidence. You look at the  
23 facts of the case you would consider at the first part  
24 of the trial. You look at the defendant's background,  
25 his character, his moral culpability or responsibility.

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VOIR DIRE EXAMINATION

2 BY MS. CONNORS:

3 Q. Mr. Dinkins, I'm Claire Connors. And Lynn  
4 McClellan will be sitting with me in a few minutes, and  
5 we're going to be the prosecutors in this case. If at  
6 any point I explain something to you that you don't  
7 understand, please stop me, because it's very important  
8 that you understand the concepts. We're not going to  
9 give a test, and you don't have to memorize them just to  
10 understand the concepts. When do you think the death  
11 penalty should be available, like, in what type of  
12 cases?

13 A. Most definitely in capital murder cases.

14 Q. Capital murders involving what type of facts?  
15 Can you think of any?

16 A. I'm not sure.

17 Q. Okay. You understand that capital murder's an  
18 intentional killing, plus another certain other crime?  
19 For example, murder plus an aggravated kidnapping equals  
20 capital murder. Do you have any problem with that?

21 A. No, ma'am.

22 Q. If you find the defendant guilty of capital  
23 murder in this case, then we go to the next part of the  
24 trial. And you have to answer two questions. And the  
25 first question is: Do you find from the evidence beyond

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1 What part did a particular defendant play in the case?  
2 Were they in the getaway car and they were not present  
3 when the murder occurred, or did they actually -- were  
4 they involved in the murder? Were they actually the  
5 shooter in the particular case? Okay. You also look at  
6 the personal moral culpability of the defendant,  
7 responsibility. Was he responsible for this particular  
8 crime? What was his responsibility? And then you  
9 say, is there a sufficient mitigating circumstance or  
10 circumstances that would warrant a life sentence rather  
11 than a death sentence? It overrides. The law says that  
12 you have to look for that type of evidence. Doesn't  
13 mean you have to find it, but you have to honestly look.  
14 Could you do that?

15 A. Yes, sir -- yes, ma'am.

16 Q. In your questionnaire you talked about certain  
17 things I'd like to ask you about. You said that your  
18 son had been involved -- I think he was shot in a  
19 drive-by shooting; is that correct?

20 A. Yes, ma'am.

21 Q. Can you tell us what happened in that case?

22 A. He was at school, playing basketball with a  
23 group of his friends; and a carload of kids come by and  
24 randomly started firing guns.

25 Q. And what was the extent of his injuries?

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1 A. He got shot in his right arm. He has no use of  
2 that right arm at all.

3 Q. And you understand the man on trial had nothing  
4 to do with that particular case?

5 A. No doubt.

6 Q. And could you put that aside and just consider  
7 the facts and the evidence in this particular case when  
8 you make your determination?

9 A. Yes, I can. That's been five years ago.

10 Q. You also wrote in there that you had been the  
11 victim of a home robbery.

12 A. Yes. Several years ago we were burglarized.

13 Q. When you say burglarized, were you present when  
14 the people came in?

15 A. No, ma'am.

16 Q. Before we started, did you know what mitigating  
17 evidence meant when the Judge spoke to you?

18 A. Not as thoroughly as I do now know.

19 Q. One of the questions you were asked, do you  
20 believe that mitigating evidence concerning a capital  
21 murder defendant's background should be considered in  
22 deciding whether he or she receives the death penalty?  
23 And you said no. And you understand that you must  
24 consider any mitigating evidence if there is any?

25 A. Yes, ma'am.

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1 Q. And you understand, Mr. Dinkins, that  
2 mitigating evidence can be, for one person something is  
3 mitigating, for another person it's not mitigating?

4 A. Would mitigating be where a person comes from?  
5 I guess that's where I was confused. Their upbringing?

6 Q. If you thought --

7 A. The reason why I answered that question that  
8 way is because the kids that shot my son come from very  
9 affluent families. They were very well to do, and  
10 that's -- I was just saying that where they come from,  
11 their background and stuff, I didn't consider that  
12 important.

13 Q. That's information that you would learn?

14 A. Right.

15 Q. For example, if somebody were intoxicated on  
16 alcohol or drugs and they committed a capital murder,  
17 you may think, well, they intentionally chose to be  
18 intoxicated on alcohol or drugs and I do not think  
19 that's mitigating. All right. The juror next to you  
20 may say, well, golly, when they took the alcohol or the  
21 drugs, they weren't thinking as clearly when they  
22 committed a capital murder as they would have had they  
23 not be drinking or not taking drugs; and therefore, I  
24 think that that is mitigating. Same evidence. Two  
25 different people view it the same way. Understand that?

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1 A. Yes.

2 Q. I'm sorry. The two different people view it  
3 different ways.

4 With respect to someone's age, you may  
5 have someone young, a teenager, who commits a capital  
6 murder, a seventeen-year-old. And you may think that at  
7 this age, at seventeen, they have committed a capital  
8 murder. Obviously, they're a very serious dangerous  
9 criminal at seventeen that they could do this. Someone  
10 else may say, at seventeen, they haven't fully  
11 developed. They really aren't the same person as they  
12 might be at twenty-five. Therefore, I think that's  
13 mitigating evidence. So, the same evidence; two  
14 different people see it two different ways. Do you  
15 understand that?

16 A. I do.

17 Q. You were talking about the people that had shot  
18 your son. I think you said they were rich kids,  
19 basically?

20 A. They were from affluent families.

21 Q. And you understand there are people, perhaps,  
22 that commit capital murders that are not from affluent  
23 families?

24 A. Yes, I do.

25 Q. Could you keep an open mind and consider

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1 someone's background, if they came from a poor family or  
2 they had a very bad upbringing? Could you consider --  
3 keep an open mind to consider whether or not that was  
4 mitigating?

5 A. I will; but just in my opinion, that things  
6 happen, different people and, you know, different walks  
7 of life. But that -- yeah, I could consider it.

8 Q. That's just it. It's different people,  
9 different upbringings. And all we're asking you to do  
10 is not make a decision right now, keep an open mind, and  
11 consider all of the evidence before you decide what the  
12 punishment should be.

13 A. Yes.

14 Q. You couldn't tell me right now whether or not  
15 you're going to find this defendant guilty, right?

16 A. Absolutely not.

17 Q. You couldn't tell me what the answer to these  
18 questions are, right?

19 A. Absolutely not.

20 Q. That's just it. That's why we're asking you to  
21 keep an open mind before you make the decisions, and you  
22 make the decisions after you've heard all the evidence.  
23 Could you do that?

24 A. Yes.

25 Q. When you were asked about your feelings about

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1 the death penalty, you answered, I'm for it if the crime  
2 merits this extreme. What crimes merit this extreme, in  
3 your opinion?

4 A. Well, a capital murder, brutality, total lack  
5 of concern for human lives.

6 Q. And you understand, Mr. Dinkins, that not every  
7 capital murder is a death penalty case?

8 A. Yes, ma'am.

9 Q. Because if you found a defendant guilty of  
10 capital murder, it doesn't automatically mean he gets  
11 the death penalty. You understand that, right? And you  
12 would be open to waiting and basing your answers to  
13 Question Number One and Question Number Two until you've  
14 heard all the evidence; is that correct?

15 A. Yes, ma'am.

16 Q. And could you assure both me and Mr. Wentz that  
17 you're willing to do that, to keep an open mind?

18 A. Yes. I have no problem with it.

19 Q. Why do you think you would be a good juror?

20 A. Because I would be open-minded. I would give  
21 it everything I had and make sure I come to the right  
22 decisions.

23 Q. If you found a defendant guilty of capital  
24 murder, okay, and you found that that person was a  
25 future danger, would you still keep an open mind and

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1 do. It's quite obvious from the questionnaire. You've  
2 listened to the Judge. You've listened to Claire.  
3 You're going to be able to answer any questions I put to  
4 you. And if you really probably tried, you could answer  
5 it in the way you think I might want to hear that answer  
6 come back.

7 But for, as I said, about the next fifteen  
8 minutes, the only thing I want to hear is what you truly  
9 believe. Because when twelve people come to judge this  
10 case, it's always my thought that the values and the  
11 beliefs that make each one of us a unique person really  
12 come into play and help shape the decision they come up  
13 with. How do you feel about that?

14 A. I agree with that totally.

15 Q. This is a very individualized process. That's  
16 why we're talking to you, personally, individually, and  
17 by yourself. There is only one person on trial in this  
18 case, and that's Charles Mamou. We sometimes come down  
19 here and we lump people into categories; attorneys,  
20 defendants, jurors. Well, each one of us is unique.  
21 You think you could judge Charles' case on its own  
22 individual merits with the guilt/innocence and, if you  
23 should find him guilty, at the punishment phase?

24 A. Yes.

25 Q. How do you feel about the prospect of becoming

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1 tell us that you would search to see whether or not  
2 there was mitigating evidence sufficient enough that you  
3 would give a life sentence. Would you still do that?

4 A. You're saying if I said yes to the first  
5 question --

6 Q. Right, would you still keep an open mind and  
7 look for any evidence that might be mitigating?

8 A. Definitely.

9 Q. Thank you very much, sir. Do you have any  
10 questions of me?

11 A. No.

12 Q. Your last chance.

13 MS. CONNORS: I'll pass the witness, Your  
14 Honor.

15 THE COURT: Mr. Wentz.

16 VOIR DIRE EXAMINATION

17 BY MR. WENTZ:

18 Q. Good morning.

19 A. Hi.

20 Q. For the next, oh, fifteen minutes or so, I'd  
21 like to talk to you about -- basically, I want to talk  
22 to you about you. And I'd like for you, if you would,  
23 to begin to do something you began to do this morning,  
24 and that's tell me the reasons why you answered the  
25 questions that I put to you in the manner in which you

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1 a juror in this case?

2 A. Well, I have -- this is the first time I've  
3 ever been involved in anything like this. I've been on  
4 a civil trial before. I've got a lot of mixed feelings  
5 about it, some positive and some negative.

6 Q. Tell me the positive and tell me the negative.

7 A. The negative is facing the traffic, getting  
8 down here every morning. I live in Kingwood. The  
9 parking. The positive is it's a learning experience. I  
10 find it interesting.

11 Q. What things have you learned so far?

12 A. Just what we're going through right now, it's  
13 all a learning experience. I've never done it before.  
14 I didn't know this is the way jurors were picked for  
15 this type of case. I didn't know it was one on one, so  
16 everything we're going through right now is a learning  
17 experience.

18 Q. Now one of the things we've been told is that  
19 when it comes to the second part of the trial -- and I'm  
20 going to jump to this. We're going to maybe come back  
21 to the first part. You get to answer these Special  
22 Issues. And the first Special Issue asks you to decide  
23 whether or not the State's proven to you something  
24 beyond a reasonable doubt. And each of those words in  
25 the Special Issues, except for reasonable doubt, are

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1 going to mean whatever they mean to you. There is no  
2 legal definition, as the Judge told you. How do you  
3 feel about the prospect of, in a sense, determining  
4 whether or not somebody is going to receive the death  
5 penalty based on your ability to predict what they're  
6 going to do in the future?

7 A. Well, you just have to weigh everything that  
8 was presented to you. You can't predict what a person  
9 is going to do; but you could have a feeling inside, a  
10 strong feeling one way or another, I'm sure, by the time  
11 it's all over with.

12 Q. And I think that when you were -- the Judge was  
13 talking with you, he talked about it not being just a  
14 strong feeling. Well, I don't think he used that word,  
15 although I think I understood what you're saying. He  
16 was talking about, is there a probability?

17 A. Right.

18 Q. And it always seems to me that we hear  
19 evidence; we hear things, and we form judgments about  
20 what we hear. And you know by the time you get to the  
21 Special Issue Number One, you're going to have decided  
22 that person is a capital murderer, which basically is a  
23 pretty condemning definition of a person. And you look  
24 at this Special Issue Number One and say, well, is that  
25 person possibly going to be a future danger to society?

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1 Can you tell me what -- you know, you used this word, a  
2 strong feeling, not so strong feeling. What are you  
3 telling me when you use those words?

4 A. Basically, I guess you'd look back at the  
5 previous things that have happened to them before, what  
6 their, you know, reputation was and develop your  
7 feelings from that, I guess.

8 Q. Okay. All right. One of the things that the  
9 Judge told you is that prison is part of our society.  
10 And if I'm not mistaken, in your questionnaire there was  
11 a question -- I think it's Number 33 -- says your  
12 mother-in-law's husband was sent to prison. It's on  
13 page 9.

14 A. Right.

15 Q. Can you tell me a little bit about that,  
16 please?

17 A. We weren't -- we're not close, but I know it  
18 was drug-related. It was -- that's basically all I  
19 know.

20 Q. How long did he stay in prison, if you know?

21 A. I don't know.

22 Q. You don't even know if he's in or out at this  
23 time?

24 A. He's out.

25 Q. Do you know if that was a good experience for

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1 him in the sense that he may have learned something from  
2 it, or it's just he went and became a repeat offender?

3 A. I have no idea.

4 Q. Okay. Do you think that it's possible that  
5 prison actually could be a good thing for somebody? In  
6 other words, they are found to have done something  
7 wrong. They are punished. They are sent away and at  
8 some point conceivably released, hopefully, a different  
9 person. Do you believe that's a possibility?

10 A. Well, I consider that one of the reasons to  
11 send someone to prison, with the hope they would come  
12 out a better person.

13 Q. Okay. With Special Issue Number Two, had you  
14 ever thought about things that might lessen a person's  
15 punishment before in the context that we're talking  
16 about? And I'm just talking about, just generally  
17 speaking.

18 A. Have I thought about it before?

19 Q. Yeah.

20 A. Not really, no.

21 Q. So that basically, when you were going through  
22 the questionnaire and you got to Number 68 and you were  
23 asked, do you believe mitigating evidence concerning a  
24 capital murder defendant's background should be  
25 considered in whether or not they received the death

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1 penalty? You, at that time, said no.

2 A. Right, and I really didn't understand the  
3 question now that -- right. I was thinking about  
4 backgrounds, their upbringing, where they come from,  
5 this, that, and the other. That's why I answered no on  
6 that one.

7 Q. Can you see, though, that in Special Issue  
8 Number Two, that that's exactly what Special Issue  
9 Number Two asks you to do, is to actually go back and  
10 look at that background, look at that case that you've  
11 already determined, look at the character of the  
12 defendant and his background, and then decide whether or  
13 not there is something that might warrant him to receive  
14 a life sentence.

15 So, basically, Special Issue Number Two  
16 asked you to do something that I think you've indicated  
17 to me you didn't -- weren't aware of when you answered  
18 Special --

19 A. That's true.

20 Q. How do you feel about having to do that?

21 A. You mean, the mitigating part?

22 Q. Yeah, to have to go back and look through the  
23 case again, look through the person's background again.

24 A. I don't have a problem with it. I think that's  
25 very important.

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1 Q. Why?

2 A. To establish the severity of the punishment.

3 Q. Do you consider life imprisonment a severe  
4 punishment?

5 A. Yes, I do.

6 Q. One of the things that a case -- the Special  
7 Issue asks you to do is look at the case itself. And  
8 you know that basically by -- if you get to Special  
9 Issue Number Two, you basically have a life or death  
10 decision to make. It's overwhelming. Have you ever  
11 heard of a case where somebody had been found guilty of  
12 a crime and some time had passed, and it was determined  
13 later through things that had come up that the person  
14 actually had not done the crime?

15 A. That has happened, yes. I can't think of any  
16 specifics but yes.

17 Q. How did you feel about that when you heard  
18 about it?

19 A. I felt like something was definitely wrong.  
20 Something was done wrong. Something slipped through  
21 that shouldn't have.

22 Q. Basically, I think that's in a guilt/innocence  
23 phase; but Special Issue Number Two allows you to  
24 reconsider whether or not the death penalty should be  
25 the appropriate punishment. It gives you a second

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1 screening or third screening, if you will, to determine  
2 what the punishment should be.

3 As I've talked to you, I've tried to get  
4 to know a little bit more about you. And obviously, I  
5 do. And in talking about the death penalty, you  
6 raised -- I think you're very justifiably concerned  
7 with -- I think it's in No. 65, if I'm not mistaken.  
8 What things do you consider to be important in deciding  
9 whether somebody should receive the death penalty or  
10 life? And you talk about the brutality of the crime.  
11 I don't want to be insensitive; but we know that in all  
12 of these cases, somebody has lost their life, and they  
13 shouldn't have lost their life. And their life has been  
14 taken, at least in one sense, in a brutal fashion. The  
15 person was shot, or the person was stabbed, or something  
16 like that. What did you mean by brutality, if you  
17 could?

18 A. Well, to me, there is a difference. A death is  
19 a death is a death. But to me, in my mind, someone  
20 shooting someone one time and he dies, that's -- as  
21 opposed to somebody sitting there running off sixty  
22 rounds or something in somebody, that's --

23 Q. I wasn't sure what you meant.

24 A. That's what I'm saying.

25 Q. Okay. One of the things -- I'm going to jump

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1 to the first part of the trial. The Judge talked to you  
2 about what are called lesser included offenses. And  
3 basically, I've always thought that a juror's job was to  
4 define conduct. In other words, they listen to  
5 witnesses and they hear all this evidence, and from that  
6 evidence they decide what they think happened.

7 In other words, the State has alleged  
8 capital murder; but that doesn't necessarily mean that a  
9 capital murder occurred. Maybe some other form of  
10 wrongdoing occurred. Maybe they say there is a capital  
11 murder where somebody's life was taken in the course of  
12 a kidnapping. A juror might be able to listen to the  
13 evidence and say, well, yes, there was a kidnapping. I  
14 understand that; but I don't see where this person is  
15 responsible for that murder. That person might be  
16 actually guilty of the kidnapping and not the murder.  
17 Or conceivably, somebody could listen to the evidence --

18 A. You're saying somebody was killed in the act of  
19 kidnapping?

20 Q. I'm saying that's what the allegation is. But  
21 as you sit there and you listen to the evidence that  
22 comes in, you're satisfied beyond a reasonable doubt  
23 that the person kidnapped the person but you're not  
24 satisfied beyond a reasonable doubt that they're  
25 actually responsible for killing the person, so that

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1 that person would obviously be guilty of the kidnapping  
2 and aggravated kidnapping but maybe not a capital  
3 murder.

4 That's why I say the jurors define  
5 conduct. You know what the allegations are, but do you  
6 believe beyond a reasonable doubt that the State has  
7 proved to you all of the allegations? It's just like  
8 there is an allegation that two people's lives were  
9 taken in the course of the same transaction. It's quite  
10 possible that you may say, well, look, I see how two  
11 lives were taken; but I don't believe it was in the  
12 course of the same transaction.

13 Sometimes we think -- we've just heard  
14 about the tragedy in Fort Worth, and that's --  
15 obviously, those young people lost their life in the  
16 course of the same transaction. But there may be a  
17 situation where the taking of the lives was not so  
18 closely connected in time and circumstances. They  
19 weren't -- and you followed the chain of events, so this  
20 may not be the same transaction. It may be two  
21 different tragedies, and they would be guilty of murder.  
22 Do you see how that can come into play for the people  
23 who listen to the evidence?

24 A. Seems that possibility would exist, yes.

25 Q. Do you have any questions of me?

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1 A. Nothing comes to mind right now.  
2 Q. Last chance. After you walk out the door, it's  
3 too late.  
4 A. No, I can't think of nothing right now.  
5 Q. My one last chance to ask you something.  
6 A. Sure.  
7 Q. Thank you.  
8 THE COURT: Mr. Dinkins, in just a second  
9 I'm going to excuse you. Before I do, I will tell you  
10 we want you back a week from this coming Wednesday.  
11 (Court admonishes prospective juror.)  
12 MATTHEW TAYLOR,  
13 having been first duly sworn, testified as follows:  
14 VOIR DIRE EXAMINATION  
15 BY THE COURT:  
16 Q. How are you this morning?  
17 A. Good. How are you?  
18 Q. I'm well. What are you reading?  
19 A. Mystery.  
20 Q. Who did it?  
21 A. I don't know yet.  
22 Q. And that's just exactly what this case is like.  
23 Mr. Taylor, before we begin, I'd ask you -- before we  
24 begin, I'd ask you to remember back to Friday, the  
25 things we talked about on Friday. Add to it this

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1 morning. Out of everything we have talked about so far,  
2 do you have any questions at all for me?  
3 A. No, I understand.  
4 Q. Is there anything up to this point, sir, that  
5 we have not yet put on the table that you feel as though  
6 we should talk about because it might have some bearing  
7 on your service as a juror in this case?  
8 A. To some extent, yes. It's not necessarily  
9 about the case. It's more the length of the case.  
10 Q. Let's talk.  
11 A. All right. My veterinarian practice, I'm sole  
12 practitioner. I do have an associate I just hired. She  
13 graduated this last spring. The practice that I have is  
14 a fairly small practice, but it requires a lot of work.  
15 And I'm -- I have not taken two weeks off for myself  
16 since I began, so that's a concern that I have.  
17 Q. I'm interrupting, and I apologize. But let me  
18 ask you this question: And I just tell you, my personal  
19 thought is, I don't think anybody ought to offer  
20 themselves as a juror and recognize going in that  
21 they're going to be financially punished for having done  
22 so. That's not what this is about.  
23 A. I understand.  
24 Q. So with that in mind, my thought again -- I'm  
25 speaking just for myself -- is that you're pretty much

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1 in control of your destiny, because I'm going to ask you  
2 some questions.  
3 A. Uh-huh.  
4 Q. And however you answer the questions are going  
5 to influence what result occurs.  
6 A. Of course.  
7 Q. But my question to you is this, Dr. Taylor:  
8 Let's assume just a second the time frame, as we talked  
9 about, it will begin October 4th and last into the week  
10 of October the 11th, but not to that Friday, not past  
11 that Friday, which is whatever date that is.  
12 A. Right.  
13 Q. If you were a juror in the case, would that  
14 cause you financial problems and business problems?  
15 A. I fear that it would. I don't know that for  
16 certain.  
17 Q. And we're talking basically ten to five, in  
18 terms of being here.  
19 A. Correct, yeah.  
20 Q. Would the potential of those problems and the  
21 existence -- potential existence of those problems be  
22 such that would detract from your ability to concentrate  
23 on what you were doing here?  
24 A. That's what I'm afraid of.  
25 Q. Because I know you can see how both sides are

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1 relying on having the attention span of the twelve  
2 people who are going to be making decisions.  
3 A. Of course.  
4 Q. And your thought is that that might be a  
5 problem?  
6 A. That could be a problem.  
7 Q. Is your thought that because of the anticipated  
8 length of time that both the State, as well as the  
9 defense -- because it would apply equally to them --  
10 would be better off if you were not a juror in a case --  
11 magnitude is not the issue; it's the anticipated  
12 duration?  
13 A. That's correct.  
14 Q. And you think each would be better off if you  
15 were not a juror for this period of time that?  
16 A. May be the case, yep.  
17 Q. And if you did become a juror, let's just  
18 say -- let's take it from the other side. Would you be  
19 able to set the concerns that you have that you  
20 discussed with us aside and concentrate on the testimony  
21 in the case?  
22 A. I would do my absolute best.  
23 Q. Other than that that we've talked about -- and  
24 I don't mean to minimize what we talked about in any  
25 way -- is there anything at all other than that that you



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1 can think of about your personal life, professional  
2 life, or health, or anything else for that matter, that  
3 you feel like would in any way interfere with your  
4 ability to be a juror in this case during the time frame  
5 we talked about?

6 A. No, sir.

7 Q. Do you have any questions before we begin this  
8 process? Do you have any questions for me, sir?

9 A. Not that I can think of.

10 THE COURT: Mr. McClellan.

11 VOIR DIRE EXAMINATION

12 BY MR. MCCLELLAN:

13 Q. Mr. Taylor, just to follow up on that, Mr.  
14 Wentz and I've been talking.

15 A. Sure.

16 Q. Can you assure us that if you were selected as  
17 a juror that there would be no distractions, or are you  
18 able to assure us that?

19 A. There would be no distractions?

20 Q. Right. In other words, we need somebody who  
21 can give their full attention to this as if this is  
22 their job.

23 A. I understand. If my associate had been with me  
24 longer, I think I could pretty well assure you. She's  
25 quite competent. However, she's not been out long, does

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LINDA KAY COOK,

2 having been first duly sworn, testified as follows:

3 VOIR DIRE EXAMINATION

4 BY THE COURT:

5 Q. Miss Cook, first off, let me ask you this: I  
6 ask you to remember back to Friday, the things we talked  
7 about on Friday; add to them this morning the things we  
8 talked about this morning. Out of everything that we  
9 have talked about to this point, do you have any  
10 questions at all for me?

11 A. No, not so far.

12 Q. Is there anything up to now that we have not  
13 yet addressed that you feel as though we should talk  
14 about because it might have some bearing or some  
15 influence on your service as a juror in this case?

16 A. No.

17 Q. Anything at all that you can think of that  
18 you're aware of presently that might have something to  
19 do with your personal life, your professional life, or  
20 health, or anything else for that matter, that you feel,  
21 at any rate, would interfere with your service as a  
22 juror in this case for the time frame we've talked  
23 about?

24 A. No, sir.

25 Q. The laws that we have talked about, do you find

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1 not have the experience that makes me comfortable.

2 Q. So you think that you still would have a  
3 concern that might affect your ability to give your full  
4 concentration to this end?

5 A. I have concerns, yes.

6 MR. MCCLELLAN: I think we have an  
7 agreement, Judge.

8 THE COURT: As I understand, there is an  
9 agreement by and between the parties that Venireperson  
10 Number 49, Dr. Matthew Taylor, by the agreement of all  
11 concerned, may be excused. Mr. McClellan, is that your  
12 agreement?

13 MR. MCCLELLAN: Yes.

14 THE COURT: Ms. Connors?

15 MS. CONNORS: Yes, Your Honor.

16 MR. WENTZ: Yes, Your Honor.

17 THE COURT: Is it Mr. Hill's, also?

18 MR. WENTZ: Yes, Your Honor.

19 THE COURT: Mr. Mamou?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Is it your request that the  
22 doctor be excused?

23 THE DEFENDANT: Yes, it is.

24 THE COURT: All right. He's excused.  
25

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1 any of them objectionable to the degree that if you were  
2 a juror you could not follow, as well as enforce it?

3 A. No, sir.

4 Q. You understand about being wide open to coming  
5 up with whatever you think you ought to come up with  
6 before the trial ever begins, but coming up with the  
7 answer based upon the evidence that's presented in the  
8 case? Does that sounds like you?

9 A. Say that again.

10 Q. I don't blame you. I heard that question  
11 myself.

12 A. You're going wide open.

13 Q. I asked it, and I don't even know what it was.  
14 Right now, before the evidence begins, are you wide open  
15 to come up with any answer? Whatever answer you do come  
16 up with will be based upon whatever evidence you do hear  
17 in the course of the trial?

18 A. Yes.

19 Q. You've got a legal background?

20 A. Yes, sir.

21 Q. Anything about this -- and I'm gathering it's  
22 civil?

23 A. Yes, sir.

24 Q. Anything about this process or from what you've  
25 seen so far that just causes you any problems?

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1 A. No, sir.

2 Q. Discomfort?

3 A. No.

4 Q. Allergies?

5 A. I take shots.

6 Q. Okay. With that in mind, I give you

7 Mr. McClellan.

8 MR. MCCLELLAN: Thank you, Your Honor.

9 VOIR DIRE EXAMINATION

10 BY MR. MCCLELLAN:

11 Q. Miss Cook, my name is Lyn McClellan. And with  
12 Claire Conners, we represent the State of Texas in this  
13 case. I want to go over your questionnaire, follow up  
14 on some of your answers there and talk to you about  
15 certain aspects that apply -- of the law that apply in a  
16 case like this and see what your opinions are about  
17 those.

18 First of all, can you kind of tell me in  
19 your own words, what is your opinion about --

20 A. About the death penalty.

21 Q. Yes, ma'am.

22 A. I think it's necessary in some instances, but  
23 it depends on what the circumstances are.

24 Q. Right. What kinds of cases come to your mind  
25 when you think of cases where you think the death

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1 think the death penalty ought to be available for would  
2 be intentional type crimes, of course. You now know  
3 that murder in the State of Texas is the intentional  
4 taking of another person's life without any legal  
5 justification. By that I mean, by legal justification,  
6 it's not self-defense. It's not an accident. Because  
7 those wouldn't be murder.

8 Murder is when you intend to kill somebody  
9 and do something to carry out the intent to do it. And  
10 for the offense of murder, as the Judge told you, the  
11 death penalty doesn't apply unless there is some other  
12 crime committed along with it.

13 A. Uh-huh.

14 Q. We have alleged in this case murder during a  
15 kidnapping. There are other kinds of cases the  
16 Legislature says the death penalty applies to; and that  
17 would be murder during a robbery, murder during a  
18 burglary, murder during a sexual assault, killing a  
19 police officer in the line of duty, killing a child  
20 under a certain age are the kinds of cases the  
21 legislature says the death penalty ought to be available  
22 for. There is no provision in the State of Texas where  
23 you automatically get the death penalty upon being  
24 convicted of that crime. Are those the kinds of cases  
25 you think the death penalty ought to be available as one

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1 penalty ought to be available as a possible punishment?

2 A. What kind? You mean, you want me to give you  
3 some examples?

4 Q. Something that may come to your mind. What  
5 kinds of cases?

6 A. If it's intentional, to maliciously hurt  
7 someone. For instance, the lady that was on death row,  
8 the first woman that was killed.

9 Q. Carla Faye Tucker?

10 A. Yes. I didn't remember her name. I think she  
11 deserved the death penalty.

12 Q. Some people come and tell us that they are in  
13 favor of the death penalty as a form of punishment for  
14 certain types of crime. Certain other people come and  
15 tell us that and go further and say they don't believe  
16 they could participate, though, in a process whereby  
17 they would be called upon to make decisions to answer  
18 these questions over here, knowing that in doing so,  
19 they would be ordering this Judge to order the execution  
20 of this defendant sitting over here on trial. Do you  
21 have any doubts about your ability to participate in  
22 that type of process and make that type of decision if  
23 that's what the law and the evidence called for?

24 A. I don't have a problem with it, no.

25 Q. Okay. You talked about the type of cases you

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1 form of punishment?

2 A. Yes, I do.

3 Q. In your questionnaire, also, we asked you --  
4 let me see if I can find the questionnaire up here and  
5 let you look at the copy. If you would, turn to Page  
6 13. There was two lists of groups of five. And the  
7 first one said, Check the statement which best  
8 summarizes your general views about the death penalty.  
9 And you checked, I'm opposed to the death penalty except  
10 in a few cases where it might be appropriate.

11 One of the other options in Number Three  
12 is, I'm generally not opposed or generally in favor of  
13 the death penalty. You chose No. 2 out of all the five  
14 that are available. And that, quite frankly, indicates  
15 to me that there is some possible opposition to the  
16 death penalty. I don't know. I'm just trying to find  
17 out what you were --

18 A. It depends. I have to hear all the facts.  
19 I've been in a lot of trials. And I have to hear both  
20 sides, and then I can make my decision.

21 Q. All right. So you think if you heard evidence  
22 sufficient to convince you that the questions ought to  
23 be answered in such a way that death results, you could  
24 do that?

25 A. Yes, sir.

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1 Q. And you said -- made a point, which is common,  
2 and a lot of people talk about it -- I need to hear both  
3 sides. Of course, on the civil side you always get to  
4 hear both sides.

5 A. Right.

6 Q. Criminal side you don't always get to hear both  
7 sides. Defendant has a right not to testify.

8 A. Right.

9 Q. I couldn't call him if I wanted to.

10 A. Right.

11 Q. They'll make that decision, whether or not he  
12 does or does not testify. But you'll be instructed by  
13 the Court as to whether he does or doesn't, you shall  
14 not consider that as any evidence of his guilt if he  
15 refuses -- not if he refuses -- but if he elects not to  
16 testify. Okay?

17 A. Uh-huh.

18 Q. Any problem with following that aspect?

19 A. No.

20 Q. So, you understand you may be called upon to  
21 make your decision based upon just hearing the evidence  
22 presented by the State. Now that doesn't mean the  
23 defense won't attack that by cross-examination and other  
24 means. I mean, they have no burden to produce any  
25 evidence at all. Not only his testimony they don't have

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1 to present, they don't have to call any witnesses to do  
2 anything. They can just rely upon cross-examining the  
3 State's witnesses and thinking that that created  
4 reasonable doubt that would prevent a jury from finding  
5 the defendant guilty.

6 Same applies to the punishment stage of  
7 the trial. You may look at Issue Number Two, where it  
8 talks about mitigating circumstances. In other words,  
9 reasons why someone should receive life as opposed to  
10 death. And logic would dictate that you expect this  
11 side over there to come forward with evidence to  
12 convince a jury -- try to convince them to give him life  
13 as opposed to death, but there is no burden to do that.  
14 The burden always lies with the State of Texas. It  
15 never shifts. Any problem with that aspect?

16 By the same token, we have a different  
17 burden of proof over here. We have proof beyond a  
18 reasonable doubt. Sometimes I think people confuse that  
19 by thinking we have to have one hundred percent  
20 certainty and all that. Well, I can tell you right now  
21 I could never prove anything a hundred percent  
22 certainty. I suggest you'd have to be a witness in  
23 order to be satisfied to that extent. You have to make  
24 your decision.

25 Just like on the civil side, where people

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1 take the stand and they testify about things they heard,  
2 what they saw, things they did. They have experiments.  
3 They may have conducted scientific evidence, whatever.

4 A. Right.

5 Q. And you'll have to make your decision based  
6 upon that, and you'll never be 100 percent certain on  
7 that situation, as well as on this side you have an  
8 indictment that alleges the elements of the offense.  
9 You have to prove those beyond a reasonable doubt.  
10 There may be lots of other questions about what went on  
11 around the situation. If they're not elements of the  
12 offense, it doesn't matter what you said about those.  
13 It's about the elements of the offense.

14 Two stages of trial. Guilt/innocence.

15 First part of the trial we had to prove what's in the  
16 indictment beyond a reasonable doubt. If you do so, you  
17 find the defendant guilty. If you don't do so, you find  
18 him not guilty. It's basically kind of a checklist,  
19 going through and checking if we prove that the  
20 defendant on a certain date, in Harris County, Texas,  
21 took the life of a certain person during the course of a  
22 kidnapping. If you prove all those beyond a reasonable  
23 doubt, check off that list, then he's guilty of capital  
24 murder.

25 But that doesn't tell you what punishment

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1 he's going to receive, because then you have to go to  
2 the punishment stage of a trial where you're given  
3 questions. And before you get to the decision at the  
4 punishment stage of the trial, you may hear additional  
5 evidence, additional evidence that was not relevant to  
6 whether or not the defendant committed the crime,  
7 whether or not he committed murder on a certain date, in  
8 Harris County, Texas, during the course of a kidnapping,  
9 but evidence about a defendant's character, their  
10 background, their criminal history, or their mental  
11 abilities or disabilities, all the things about the  
12 individual's family, how he grew up, and all kinds of  
13 things about his upbringing.

14 Because the emphasis -- and punishment is  
15 punishment this defendant should receive for the crime  
16 we've already found him guilty of. So that's why the  
17 concentration on the individual defendant who is on  
18 trial, because then that helps answer these questions.  
19 So in answering these questions at punishment, you get  
20 to use two bodies of knowledge. One, the crime itself,  
21 which you heard at guilt/innocence. Then the character,  
22 background, and that kind of information that you hear  
23 at the punishment stage of trial. Okay?

24 A. Uh-huh.

25 Q. Some people might say -- like on Issue Number

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1 One it says: Do you find from the evidence beyond a  
2 reasonable doubt -- and there again, still the same.  
3 The burden's on me that there was a probability that the  
4 defendant would be a continuing threat to commit future  
5 acts of violence.

6 Some people might say, if I found him  
7 guilty of capital murder, I always believe there is at  
8 least a probability that he would be a continuing threat  
9 to commit other acts of violence. That may or may not  
10 be the case; because at the punishment stage of the  
11 trial, you may hear background, character. You may hear  
12 the person is a Boy Scout, straight-A student, altar  
13 boy, never been in trouble with the law before in his  
14 life. This act of capital murder, which has no doubt  
15 happened, you found beyond a reasonable doubt was a  
16 total aberration from the rest of his life. And by  
17 finding he is not going to be a continuing threat  
18 doesn't make him not guilty. That doesn't undo it. It  
19 just decides what punishment he's going to receive.

20 On the other extreme, you may find a  
21 person that's been in and out of trouble all of their  
22 life and a constant sore to society's side. So, there  
23 again, you have to wait until you hear all the evidence  
24 to make up your mind. Any problem with that aspect.

25 A. No.

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1 Q. If you found Issue Number One to be yes, then  
2 you go to Issue Number Two. It basically asks you to  
3 stop and evaluate everything you've heard so far. It  
4 says: Taking into consideration the circumstances of  
5 the offense -- which would be what you heard at guilt or  
6 innocence -- the defendant's character and background --  
7 that would be what you heard at punishment -- and  
8 whether or not you consider his personal moral  
9 culpability -- I'd like to refer to it as his personal  
10 responsibility for the commission of the crime -- and do  
11 you find there is sufficient mitigating circumstance or  
12 circumstances -- I'd like to refer to it as sufficient  
13 reasons why this person ought to receive life as opposed  
14 to death.

15 For example, what you're asked to do is go  
16 back and listen to all the evidence in the trial and  
17 weigh it in your mind. Was it mitigating? And if it  
18 was, is it sufficiently mitigating for me to change my  
19 vote from death to life? And the reason it's that way  
20 is because if you've already found him guilty, which you  
21 had to to get to the punishment stage --

22 A. Right.

23 Q. -- if you found on Issue Number One he's a  
24 continuing threat, he's going to get the death penalty  
25 unless you decide in Issue Number Two there is some

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1 reason or reasons why he should not.

2 A. Right.

3 Q. So, you might look back to the evidence. And  
4 you might, say, remember hearing evidence in the trial  
5 the defendant was high on drugs or alcohol when he  
6 committed a crime. Juror Number 1 would say, I think  
7 that was a life sentence; because if you're high on  
8 drugs and alcohol, you do things you wouldn't ordinarily  
9 do. Juror Number 2 may say, I don't think it's  
10 mitigating at all, because I know people on drugs or  
11 alcohol who don't commit capital murders. I don't see  
12 the connection between those factors.

13 So, two people have looked at the very  
14 same evidence and came up with different opinions. And  
15 that's okay, because this is what the question asks you  
16 to do. It's for you, yourself, to look back at the  
17 evidence and you, yourself, decide what effect it ought  
18 to be given. Okay?

19 Same thing about the age of the defendant.  
20 Some people may say, He was a young man. And when  
21 you're young, you make stupid decisions. Get older,  
22 you're more mature. I think that mitigates a life  
23 sentence. Another juror may say, I don't think it  
24 mitigates at all. At this age the boy committed the  
25 most heinous crime. No telling what he's going to be

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1 doing ten or fifteen years down the road. Again, two  
2 people looked at the same evidence but came up with  
3 different opinions. But that's okay.

4 Same thing about a person's mental  
5 abilities or disabilities. Maybe there is evidence that  
6 he's a slow learner or special ed student, or maybe he  
7 couldn't get out of high school. One person may say, I  
8 think that's mitigation towards a life sentence.  
9 Another person may say, I know all kinds of people who  
10 didn't get out of high school and went on to have  
11 productive lives. They don't go out and commit capital  
12 murder. I don't see any connection there between the  
13 two.

14 What it asks you to do is to go back and  
15 look at all the evidence, and you weigh it in your mind  
16 and make up your mind. Any problem with that?

17 A. No, sir.

18 Q. The law says that if you -- that voluntary  
19 intoxication is not a defense. In other words, if I go  
20 out and get high on some substance or whatever, go out  
21 to commit a crime, I'm still held responsible for that  
22 crime. Do you agree with that aspect of the law?

23 A. Yes. I mean, you voluntarily did it. You did  
24 it to yourself.

25 Q. Right. It's different. That's why it says

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1 voluntary intoxication. It's different if somebody  
2 slips something in your drink and causes you to go off  
3 on a binge or whatever. Anything that you have thought  
4 of or that comes to your mind since we've been talking  
5 about this or since you have gone through this process  
6 that you say, well, if I ever heard evidence of this,  
7 whatever that might be, that would always be mitigating  
8 in my mind to such a degree that I would think a life  
9 sentence is the appropriate punishment. Anything you  
10 thought of or comes to your mind?

11 A. No. Every person is different. You have to  
12 consider the factors for that one person in that  
13 incident.

14 Q. After having filled out this questionnaire and  
15 listened to the Judge's voir dire and had over the  
16 weekend to think about it, what is your thought about  
17 the prospect of being a juror in a capital murder case  
18 where you're called upon to make a decision that a  
19 person may have to forfeit their life for a crime you  
20 may find they're guilty of?

21 A. I thought I would already have been struck by  
22 one of y'all, personally.

23 Q. Why? You may still yet be.

24 A. Well, I know; but because I am in the legal  
25 profession, and even though it's the civil side, I don't

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1 know. I just thought I would. I've never been  
2 through -- I've been on jury duty before, but I've  
3 always been struck. It's been years since I served, and  
4 I kind of thought I was overdue to serve.

5 Q. Now if, let's say, you were a juror in a case,  
6 you're going to be given instructions from the Court,  
7 the law. You have to judge the facts yourself. Is  
8 there anything about your legal background that you  
9 think would make you better equipped or less equipped?

10 A. No. It's just that I kind of understand the  
11 process probably more, the way things work in the  
12 courtroom.

13 Q. Okay. All right. Obviously, both of us are  
14 going to be faced with a decision as to whether or not  
15 to accept you or not.

16 A. Right.

17 Q. Can you give me a reason why I should take you  
18 as a juror?

19 A. I'm a very fair person. I always try to see  
20 both sides. And that's one of the things that my  
21 friends tell me about me is that, you always look at  
22 both sides.

23 Q. Okay.

24 A. I may have an opinion, but I always weigh both  
25 sides.

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1 Q. Can you give me some reason why I should not  
2 want you as a juror?

3 A. I don't know.

4 Q. Okay. You were a witness to a robbery; is that  
5 correct?

6 A. Uh-huh.

7 Q. So you were inside the store when somebody came  
8 in and robbed the store?

9 A. Yes.

10 Q. Was that person ever prosecuted?

11 A. I don't know. When the police came, we left.  
12 I was with some people from Scotland, and they didn't  
13 want to hang around and be detained here to be  
14 witnesses.

15 Q. Right, okay. How did that make you feel,  
16 seeing a robbery go down?

17 A. Well, I reacted -- I was surprised, because it  
18 was kind of scary.

19 Q. Were you the object of the affection of the  
20 robber?

21 A. No, no, no. We were in the store, and this guy  
22 had been in and left. And we were, you know, on one of  
23 the rows where they couldn't really see us. So the guy  
24 comes back in, and he knocked everything off the  
25 counter. So I said, Get down. And then he --

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1 Q. Get down, you're in Houston?

2 A. Right. So the guys got behind, and he ran out  
3 the store. And the storekeeper ran after him, and then  
4 we went and called 911. And when the police got there,  
5 we left.

6 Q. You also indicated you had a friend that had  
7 been murdered.

8 A. That was in 1989.

9 Q. Was anybody prosecuted for that offense?

10 A. To this day, no.

11 Q. Was that in Houston?

12 A. She lived in Houston. She was taken from her  
13 home, and she was left in Fort Bend County.

14 Q. Okay. Anything about that that would affect  
15 your --

16 A. That doesn't have anything to do with this  
17 trial.

18 Q. All right. Thank you very much, Miss Cook. I  
19 appreciate your time, and I want to pass you to the  
20 Court.

21 THE COURT: Mr. Wentz.

22 VOIR DIRE EXAMINATION

23 BY MR. WENTZ:

24 Q. Good morning.

25 A. Morning.

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1 Q. As you've been told, my name is Kurt Wentz.  
2 And along with Wayne Hill, we're representing Charles  
3 Mamou. And you have your questionnaire with you?

4 A. Yes, I do.

5 Q. I'd like to go over it a little bit more, if I  
6 might.

7 A. Okay. I got kind of tired of completing it  
8 near the end.

9 Q. That's okay. My questions are going to be at  
10 the beginning.

11 A. Okay.

12 Q. But before I get there, as you said, you're  
13 involved with the legal process. You know, you come  
14 down here quite sophisticated about what's going on in  
15 trials and things like that. You know about the Carla  
16 Faye Tucker case, so you know something about capital  
17 murder.

18 A. Well, I don't know all about that case. I just  
19 know what I heard when she was executed from TV. I  
20 didn't follow the case when it happened.

21 Q. Were you aware that our capital murder cases  
22 are handled in the manner that the Judge has outlined  
23 for us, or for you?

24 A. No. I was very surprised at the jury selection  
25 and everything else. I didn't know that.

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1 Q. Did you know anything about the Special Issues  
2 that you'd have to answer?

3 A. Not really, no. I was in the courtroom during  
4 a murder trial in 1993 in Ted Poe's court.

5 Q. Could you tell us why you were there?

6 A. My -- it was Billy Ray Clure, who shot his  
7 father in one of those health care facilities. He had  
8 gone into a coma. And my sister is married to Billy's  
9 brother, so I was there just for support of the family  
10 and to bring family members to and from the court. But  
11 he was acquitted, so --

12 Q. Did you feel okay being there for this person?

13 A. Yes.

14 Q. Did you feel it was the right thing to do?

15 A. Yes, I did.

16 Q. Did you feel that -- you indicated he was  
17 acquitted. Did you feel that was the right thing?

18 A. Under -- there were mitigating circumstances,  
19 yes, and I feel it was the right thing to do.

20 Q. And I think that one of the things you've told  
21 us already is that, basically, you look at the person,  
22 you look at the circumstances, and then you basically  
23 make your judgments and form your opinions.

24 A. Uh-huh.

25 Q. Early in the questionnaire, you were asked a

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1 series of questions; agree, disagree, strongly,  
2 whatever. They're on Page 6; and they're 11, 12, and  
3 13. And basically, you said you generally agree to all  
4 of those propositions. Can you tell me overall why you  
5 chose that particular response to the --

6 A. Because you have to look at that individual and  
7 their circumstances. I didn't grow up the same way you  
8 did or the court reporter and the Judge. We all have  
9 different environments we live in even today. So I  
10 think the -- how you live, you know, affects what you  
11 do.

12 Q. One of the things that probably come up in the  
13 way that some people live is their exposure to drugs.  
14 It may be less. It may be more. It probably is an  
15 individual matter. And you're asked a series of  
16 questions that touch on the subject of the drugs. And  
17 on Page 10, Question 46, you're asked: Would an  
18 individual's use or sale of drugs prevent them from  
19 relying on any defense available to other members of the  
20 society? And you say yes. You give an explanation. I  
21 was wondering if you could talk with me a little bit  
22 about that.

23 A. Well, in the firm that I work in, we just had a  
24 secretary that was a cocaine addict. She had a child,  
25 and she's just had that child taken away from her. She

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1 went for rehab for the third or fourth time, but she's  
2 had a relapse. And I used to go in my office every day  
3 and close the door. So, I didn't know what she was  
4 going through, what was going on. But she knew, because  
5 she had been on crack cocaine before. But she still  
6 went back after being on it for three years. I knew she  
7 knew that and what it would do to her body and what it  
8 could possibly do to her child.

9 I mean, if people -- there is all this  
10 stuff today on TV. People know. I mean, it's in  
11 programs on TV. It's in the paper. It's in magazines.  
12 It's on billboards. I mean, it's the law that certain  
13 drugs are illegal. It's not -- unless you were probably  
14 somebody foreign that came here and could not read or  
15 write, maybe you wouldn't know. I mean, it's pretty out  
16 there.

17 Q. I think one of the things that this question  
18 might have been directed to ask is whether or not if  
19 somebody used or sold drugs that they could have  
20 available to them at their trial some of the defenses  
21 that you or your friends at your law firm might have.  
22 In other words, self-defense for an example. If  
23 somebody were, let us say, a drug -- somebody who sold  
24 drugs, and they were held up at gunpoint or they were  
25 threatened; a gun was put in his face. Would that

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1 person have the right to rely on the self-defense?

2 A. If someone was trying to harm them with a gun,  
3 they should have a defense. Even though what they were  
4 doing was illegal, no one else has the right to come and  
5 shoot them or hurt them.

6 Q. I think that's generally what the question was  
7 going to say, but I appreciate you sharing with us what  
8 happened with your coworker.

9 In Question Number 68, which is, I think,  
10 on Page 13, there is a question about mitigating  
11 evidence. And when you were answering that question,  
12 what did mitigating evidence mean to you?

13 A. Mitigating, I would have to hear all the facts  
14 about that. What happened? Why did they get to this  
15 point in their life to get -- for this event to occur?

16 Q. Essentially, the things that are talked about  
17 in Special Issue Number Two.

18 A. Right.

19 Q. Okay. Actually, that mitigating evidence can  
20 also be taken into consideration, if you think it's  
21 appropriate, in Special Issue Number One, if you think  
22 it goes to helping you answer Special Issue Number One,  
23 as well as how it can come into play in both situations.

24 A. Right.

25 Q. But certainly, Special Issue Number Two, it is

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1 given primary importance; because at that point, you're  
2 put in the position of essentially answering that life  
3 or death question.

4 A. That's pretty serious, too. That's a serious  
5 question.

6 Q. I'm going to talk with you about the Special  
7 Issues now. One of the things that I've had is we  
8 sometimes arrive at decisions about people. And after  
9 we come to that decision or that opinion about the  
10 person, we're apt to make a lot of other assumptions  
11 about the person, and they may not be right.

12 A. Uh-huh.

13 Q. The example that I used the other day was the  
14 kid who goes to school, and he does real bad on one of  
15 those standardized tests; or he gets to school, and he's  
16 just not performing well, and the teacher assigns him to  
17 the slower classes. And, you know, the kids say, well,  
18 you're in the slow class. You're probably dumb. And  
19 people begin to treat him as he's not very bright. But  
20 in fact, he may be quite bright. And it's all based on  
21 that one initial decision.

22 When you get to Special Issue Number One,  
23 you've already formed a pretty important decision in  
24 your mind. You've found somebody, a fellow citizen,  
25 guilty of capital murder. And having come to that

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1 conclusion, it's quite possible for you to look at those  
2 Special Issues and say, Hey, these are pretty easy.  
3 Somebody who's guilty of a capital murder is going to be  
4 a future danger to society. Look what they already have  
5 done. How do you feel about that.

6 A. Well, when you get to the Special Issues,  
7 that's the punishment phase.

8 Q. Exactly. I'm just saying, at guilt/innocence  
9 you've come to this decision that the person is guilty  
10 of society's worst crime. And you take that evidence,  
11 you take that opinion with you into the punishment  
12 phase. And obviously, you're supposed to be starting  
13 all over. But, you know, at the very least you've got  
14 the evidence of the crime.

15 A. You've already got that in your mind, right.

16 Q. As you've just said, you've already got that in  
17 your mind. How do you see Special Issue Number One? Is  
18 this something that's already been answered for you, or  
19 is this based on your initial decision? You begin to  
20 start all over again and look at that question and  
21 evidence.

22 A. Well, knowing me, I'd probably look at it when  
23 I hear additional information about that person. And  
24 that would affect how I answered Number Two. If I'm not  
25 going to know his past, you know, if he's been convicted

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1 of a crime, drug use, child abuse, if he was abused as a  
2 child, what happened to him, then you know, I'd have to  
3 take that into consideration. Because I would want that  
4 same thing to happen to me if I was in his place. I  
5 would want the people to look at all the facts and weigh  
6 that, because it's a pretty heavy decision.

7 Q. And I think the Judge told you these decisions  
8 that you make are independent of each other. The  
9 guilt/innocence decision was its decision. Special  
10 Issue Number One is its decision. Special Issue Number  
11 Two is its decision.

12 A. Right.

13 Q. And when you look at Special Issue Number One,  
14 all of the words in that Special Issue are going to be  
15 what they mean to you, except for the definition of  
16 proof beyond a reasonable doubt. And the Court's going  
17 to give you that definition.

18 A. Right.

19 Q. It's going to be the same definition that you  
20 get in the guilt/innocence phase. I'm not sure if they  
21 had the definition in 1993. But the words that are  
22 defined are the following words: Proof beyond a  
23 reasonable doubt, therefore, must be proof of such a  
24 convincing character that you would be willing to rely  
25 and act upon it without hesitation in the most important

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1 of your own affairs.

2 There are some other words; but that  
3 certainly, in my opinion, is the crux of it. How do you  
4 feel about having to predict somebody's future in terms  
5 of whether or not that person is to receive the death  
6 penalty?

7 A. How do I feel about it? I take it pretty  
8 seriously.

9 Q. Why? I mean, is it the fact that you're called  
10 upon to predict somebody's future? Is it the  
11 consequences?

12 A. It's a little of both. It's a little of both,  
13 because you have -- I mean, that's going to affect  
14 what's going to happen to him. And I would want, you  
15 know, the same considerations for me or somebody that I  
16 cared about. So, I take it very seriously.

17 Q. I've got no doubt that you would. In Special  
18 Issue Number Two, they talk not only about -- well, they  
19 talk about mitigating circumstances; and they say they  
20 can come from three different areas; the nature of the  
21 crimes, the circumstances of the offense, the  
22 defendant's character and background, and his personal  
23 moral culpability. Can you see a circumstance of a  
24 crime being mitigating?

25 Let me give you an example. Somebody goes

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1 into a store, just like you said, only the person's  
2 crime is a whole lot more aggravated than what you had  
3 to witness and experience. And they go in with the  
4 intention of actually shooting the person, and indeed  
5 they do. Therefore, you would have a capital murder.

6 Another person may go into the store not  
7 quite with that intention. They go in to rob the store;  
8 but in the course of what happens, guns go off. I use  
9 the example, there is almost a fire fight between  
10 different people having guns. And lo and behold, the  
11 same horrible result occurs. You had the same result,  
12 but you have it happening in different circumstances.  
13 That might be something that you would consider in terms  
14 of the circumstances of the offense, the person who does  
15 go in with the intent to kill initially as opposed to  
16 one who, ultimately, that happens; and there is no  
17 justifying it because it happens in a different way or  
18 circumstantially.

19 There may be some aspects of self-defense  
20 that doesn't reach the level of finding the person not  
21 guilty; but clouds are hanging over your decision, and  
22 you think that it might warrant this person to receive  
23 life imprisonment. You see how the circumstances of the  
24 crime can come into play? I'm not saying they would,  
25 but could come into play in answering Special Issue

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1 Number Two.

2 A. Yes, I do.

3 Q. Because I think sometimes there is all this  
4 focus on background; but the mitigating evidence could  
5 come from other sources, as well. I'm searching for  
6 things to ask you; and I don't want to, you know,  
7 belabor your time and, you know, take advantage of your  
8 sitting there. Is there something you think I should  
9 ask you?

10 A. Well, no. I've never gone through this  
11 process, so I don't know what you're supposed to ask me.  
12 I do want to make this comment, though: I do know that  
13 even today, that no matter what your age is, you can go  
14 out sometime and be in a situation and something could  
15 happen to make that life threatening. Or like kids can  
16 go out, you know, and be just going out and be  
17 somewhere. And then a group of kids can come, or some  
18 more criminal element. I'm not saying they're  
19 criminals; but things can happen, and things can get to  
20 a bad situation when the evening didn't start out that  
21 way. And things do happen; and you can find yourself  
22 like that, like that night we were in that store. We  
23 were there just to get some stuff for their hotel room  
24 and leave; but, you know, I wasn't ever really that  
25 afraid, because the guy didn't have a knife and he

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1 didn't have a gun. So I didn't really think he was  
2 going to hurt us. But, you know, we started out  
3 innocent; but we got involved in something that we had  
4 no idea it was going to happen.

5 Q. One of the things that Mr. McClellan mentioned  
6 is this thing called the burden of proof, and he was  
7 very accurate in saying the defense does not have the  
8 burden of proof at guilt/innocence. We don't have the  
9 burden of proof with regards to special Issue Number  
10 One, and we're not required to bring you evidence that  
11 would prove that there is mitigating circumstances.

12 And I know that you've heard this thing  
13 called the defendant's Fifth Amendment right not to  
14 testify. And you understand that also applies at the  
15 punishment phase of the trial, because very frequently  
16 people will expect to hear feelings of remorse come from  
17 the accused on trial and figure that that's very  
18 important. But if you have a Fifth Amendment right and  
19 you exercise that right, then obviously you're not going  
20 to be expressing those feelings for the jurors.

21 A. Right.

22 Q. You wouldn't hold that against a defendant,  
23 would you?

24 A. No, I would not. I have that right, also; and  
25 so do you.



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1 Q. Thank you very much.

2 THE COURT: Thank you, sir.

3 (Court admonishes juror.)

4 JUDITH LYNNE BARNETT,

5 having been first duly sworn, testified as follows:

6 VOIR DIRE EXAMINATION

7 BY THE COURT:

8 Q. Miss Barnett, how are you this morning?

9 A. I'm fine, thank you.

10 Q. Good. Miss Barnett, at the outset, let me ask  
11 you this: Going back to the things we talked about on  
12 Friday, add to them this morning and the things we  
13 talked about. Out of everything we have talked about to  
14 this point, do you have any questions at all for me?

15 A. No.

16 Q. Is there anything, any topic that we have not  
17 yet addressed that you feel as though we need to talk  
18 about because it might have some bearing or some  
19 influence on your ability to be a juror in this case?

20 A. No.

21 Q. Is there anything at all, whether it might be  
22 something about your personal life, your professional  
23 life, your health, or anything at all for that matter,  
24 that you can think of that might in any way interfere  
25 with your ability to be a juror in this case during the

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1 time frame we've talked about?

2 A. No.

3 Q. The rules that we've talked about, anything  
4 that you've heard so far that causes you some  
5 disagreement?

6 A. No.

7 Q. The whole idea, I think I said earlier, was  
8 just to make sure that starting off the case, everybody  
9 recognizes they're going to have to be led to whatever  
10 result they reach on the basis of how they evaluate  
11 whatever evidence was presented to them. Does that  
12 sound --

13 A. Yes.

14 Q. The questions we talked about and the possible  
15 verdict, can you see how each question that the jury  
16 resolves is independent of how the next question should  
17 be answered?

18 A. Yes, I do.

19 Q. Any questions of me?

20 A. No.

21 Q. Thank you.

22 THE COURT: Miss Connors.

23

24

25

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1 VOIR DIRE EXAMINATION

2 BY MS. CONNORS:

3 Q. Miss Barnett, I'm going to ask you some  
4 questions; but I just want you to just relax. We just  
5 want to know how you feel. Okay. It's not a test or  
6 anything. What is your opinion of the death penalty?

7 A. My opinion of the death penalty?

8 Q. Yes, ma'am.

9 A. I think it's warranted in certain cases.

10 Q. And what type of cases would those be?

11 A. I would think grievous and heinous crimes  
12 deserve the death penalty.

13 Q. You said something in your questionnaire about  
14 the things that are important in deciding whether a  
15 person should be sentenced to the death penalty or life  
16 imprisonment. And you said, nature of the crime/  
17 mitigating circumstances. What would be the mitigating  
18 circumstances in your mind? What things would be  
19 mitigating?

20 A. A large degree of mental retardation probably.  
21 I can't think of anything right offhand, but that one  
22 comes to mind. I'm sure there are others.

23 Q. You worked for the Texas Department of Human  
24 Services for a very long time?

25 A. Uh-huh.

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1 Q. What did you do for them?

2 A. I started as a case worker and ended up as  
3 regional -- deputy regional administrator.

4 Q. Why did you decide to leave them?

5 A. I opened my own business here in Houston.

6 Q. As a case worker, who did you deal with?

7 A. I dealt with persons applying for Aid to  
8 Families with Dependent Children and food stamps.

9 Q. And throughout the time you worked as a case  
10 worker, is that what you dealt with?

11 A. Yes.

12 Q. You heard the Judge talk. And you know that if  
13 you find this defendant guilty of capital murder, then  
14 there is a choice as to what the punishment should be.  
15 And you have to decide Issue Number One. And Issue  
16 Number One is: Do you find from the evidence beyond a  
17 reasonable doubt that a person would commit criminal  
18 acts of violence that would constitute a continuing  
19 threat to society?

20 A. Uh-huh.

21 Q. Do you believe that there are circumstances  
22 where you could answer yes, that someone was guilty of  
23 capital murder, and also believe that they would not  
24 commit criminal acts of violence in the future?

25 A. Yes.

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1 Q. There is a probability -- I'm sorry. I used  
2 the word probability, because you will never know a  
3 hundred percent whether someone --

4 A. Right.

5 Q. So the law says, is there a probability that  
6 someone would commit criminal acts of violence in the  
7 future? And as the Judge explained to you, you  
8 understand probability means more than possibility  
9 but --

10 A. Less than certainty.

11 Q. -- less than certainty, and more likely than  
12 not. So you understand there would be circumstances  
13 where you could say yes, someone was guilty of capital  
14 murder, and answer no to the first question?

15 A. Yes.

16 Q. Do you also understand that criminal acts of  
17 violence could be violence against both persons and  
18 property?

19 A. Yes.

20 Q. For example, any type of burglary, or some type  
21 of perhaps assaultive offense where I punch someone.  
22 That would be an act of violence. And that you believed  
23 that a person would -- there is a probability they would  
24 commit criminal acts of violence in the future. If you  
25 answer yes to that question, then the defendant would

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1 get the death penalty unless -- and the way to get out  
2 of that or get around it is your answer to Number Two.

3 A. Right.

4 Q. And the law is, there is nothing in there that  
5 the State has to prove the answer to you beyond a  
6 reasonable doubt to that question. So what you need to  
7 do is look at the facts of the case. You need to look  
8 at the defendant's character and his background, his  
9 culpability, involvement, responsibility in the crime,  
10 and decide whether all that together warrants that you  
11 give a life sentence rather than a death sentence.  
12 Could you do that?

13 A. Yes.

14 Q. We asked you whether you ever had a different  
15 opinion concerning the death penalty, and you said yes.

16 A. Yes.

17 Q. What did your opinion used to be?

18 A. I did not believe that it was warranted under  
19 any circumstances.

20 Q. And what made you change?

21 A. Life experiences probably, maturity perhaps.

22 Q. When do you think you made that change?

23 A. I'd say twenty years ago.

24 Q. You said, with respect to that sentence, I feel  
25 that some crimes should result in the death penalty due

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1 to their heinous, brutal nature. What did you mean by  
2 heinous, brutal nature?

3 A. That means some crimes are so indescribable in  
4 their brutality, in the fact that there is no reason for  
5 them other than rage or whatever, that as a punishment,  
6 there is only one form of punishment for a certain --  
7 for that certain kind of crime, and that is death.

8 Q. If you believe that the facts of a particular  
9 case were of a heinous and brutal nature and you found  
10 someone guilty of capital murder, would you wait and  
11 listen to the evidence at the second part of the trial  
12 before you answered Question Number One?

13 A. No.

14 Q. Are you saying that you would always answer  
15 that question yes? --

16 A. Number One?

17 Q. -- if you found someone guilty of capital  
18 murder, or would you wait until you heard the evidence  
19 at the punishment stage of the trial before you made  
20 that decision?

21 A. I would wait.

22 Q. And with respect to the second question, it  
23 talks about whether you're going to get a life sentence,  
24 basically override the death sentence and give him a  
25 life sentence. And it talks about mitigating evidence.

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1 And some people think that -- for example, you said if  
2 someone was severely retarded, then you might not be  
3 able to give the death penalty to someone like that; is  
4 that correct?

5 A. That's correct.

6 Q. Some other person may think if someone were  
7 retarded that they were always going to be that way and  
8 the facts wouldn't change, and they may not see that as  
9 mitigating. Someone might think if a person drank to  
10 the point where they were drunk and they went out and  
11 committed a crime, that's not mitigating because they  
12 intentionally got drunk and they committed the crime.  
13 Someone else may say, well, they wouldn't have done that  
14 had they not been drunk; therefore, in my mind, that's  
15 mitigating. So do you see where different  
16 circumstances, people can see the same set of facts and  
17 somebody may say it's mitigating and some may say it's  
18 not?

19 A. Absolutely.

20 Q. Let's talk about a situation where someone is  
21 shot one time versus five times or twenty-five times.  
22 In your mind, is this a heinous, brutal crime?

23 A. Well, it's certainly a grave crime, but I --  
24 that would not fit my personal definition of heinous.

25 Q. So I don't know if you followed the case that

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1 was tried just last week where someone was stabbed, I  
2 believe, over fifty times. Is that something that would  
3 be heinous and brutal, in your mind?

4 A. I assume they died?

5 Q. Yes, ma'am.

6 A. That kind of brutality would come close to my  
7 definition.

8 Q. So what I hear you saying, almost, is there has  
9 to be extreme brutality before you could consider giving  
10 someone the death penalty?

11 A. No, not -- I think what I meant was that in  
12 terms of the death penalty, that it is certainly  
13 warranted in those circumstances, heinous, brutal  
14 crimes. The law, however, is the law. And whatever the  
15 circumstances of a case were, you apply the law, I  
16 assume, regardless of my personal definition.

17 Q. That's right. And could you do that?

18 A. Yes.

19 Q. What if it's a senseless crime and the victim  
20 is just innocent, totally innocent; but perhaps the  
21 facts of the case -- maybe there is one stab wound, one  
22 shot. Do you think you could consider the death penalty  
23 in that type of crime?

24 A. Sure.

25 Q. And you understand that if you answer that he's

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1 A. Yes. But it's just, I mean, that's a very  
2 honest answer. I can't imagine anybody saying, yes, I  
3 would love to do this.

4 Q. Did you talk to anybody about your feelings  
5 this weekend when you were thinking about it?

6 A. No, not really.

7 Q. When you say you're a liberal socially, what  
8 does that mean?

9 A. That means that I have no problem with my tax  
10 money being spent on programs that uplift and educate  
11 people who normally might not have that available to  
12 them.

13 Q. Did you ever work as a social worker?

14 A. As a case worker, but not as a licensed social  
15 worker.

16 Q. How about your psychology minor in college?  
17 Did you ever follow up on that?

18 A. No.

19 Q. Do you think you would give any more credence  
20 to a psychologist or a psychiatrist than you would to a  
21 normal person?

22 A. I guess it depends on what they were testifying  
23 to.

24 Q. Would you automatically believe everything they  
25 said?

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1 a continuing -- that there is a probability that he  
2 would commit criminal acts of violence in the future  
3 yes, and you answer the second question no, that the  
4 Judge will then impose a death penalty?

5 A. Yes.

6 Q. And you understand. Can you honestly be a part  
7 of that process?

8 A. Yes. I've thought about it in the last few  
9 days.

10 Q. What were your thoughts when you were thinking  
11 about it?

12 A. I have very conflicting situations -- I mean,  
13 emotions about it.

14 Q. Tell me about those, please.

15 A. It is one thing to be philosophically or  
16 theoretically in agreement with something and another  
17 thing to raise your hand and actually vote to put  
18 somebody to death. However, I have great respect for  
19 the law. The situation I find myself in is a grave  
20 responsibility, but it is my duty to follow whatever the  
21 law is.

22 Q. Is it a situation that you would rather not be  
23 placed in?

24 A. I think, yes.

25 Q. So, you would rather not be on the jury?

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1 A. No, ma'am.

2 Q. Do you know people that have gone to  
3 psychologists or psychiatrists?

4 A. Yes.

5 Q. Have you ever gone to one?

6 A. No.

7 Q. You talked about a friend of yours who --  
8 former business associate -- was convicted of sexual  
9 assault on a minor.

10 A. Uh-huh.

11 Q. Did you think that person was treated fairly?

12 A. Yes.

13 Q. And do you know what his sentence was?

14 A. Two life terms, I think.

15 Q. Did you follow the case or --

16 A. No, just through hearsay, I mean, the office  
17 gossip and things.

18 Q. Was that the Texas Department of Human  
19 Services?

20 A. No.

21 Q. Where was that?

22 A. It was A.H.A.N. Home Care.

23 Q. Miss Burnett, do you know two women, one's name  
24 is Risqui, R-I-S-Q-U-I, and the other one is Suzette  
25 Barr? She's an auditor for Continental?

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1 A. No, I don't. I've only been there a short  
2 time.

3 Q. Did you follow the Karla Faye Tucker case? She  
4 was asking the governor to overturn her death sentence?

5 A. Right, I remember the name; and I don't think  
6 it was --

7 Q. Did you ever have any feelings about that?

8 A. No. Now, I remember she was the one that got  
9 reformed or --

10 Q. Right. What did you think about that? Did you  
11 think the governor should change the death penalty to  
12 the life sentence?

13 A. No, I don't think I did think that.

14 Q. Why not?

15 A. I think she had been tried and convicted  
16 fairly, and she was guilty; and the sentence was  
17 probably prudent.

18 Q. Why do you think I would want you on this jury?

19 A. Because I guess I'm in agreement with the death  
20 penalty. I can't think of another reason.

21 Q. I'm just asking; because obviously, I need to  
22 know that. And I don't want to put your situation  
23 where, you know, you couldn't do something. It's one  
24 thing, like you said, to say out here, I believe in all  
25 the laws and I could follow the law. It's another thing

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1 Miss Connors asked you a question. I  
2 think it was her last one. Would you have any  
3 reservations about her putting you on the jury?  
4 Something like that. Why did you answer the question  
5 the way that you did?

6 A. I answered that because, I am very confident in  
7 my ability to make fair and impartial judgments. Also,  
8 I'm capable of understanding what's presented to me and  
9 coming to a decision.

10 Q. Okay. One of the things I noticed in your  
11 questionnaire on Page 12 and Page 13, you, on your own,  
12 are using the term, mitigating circumstances or  
13 nonmitigating crime.

14 A. Uh-huh.

15 Q. When you were using that word, what did it mean  
16 to you as you used it back when you filled out the  
17 questionnaire?

18 A. Meant to me that there were no circumstances  
19 surrounding the commitment of the crime that either, in  
20 terms of -- well, I guess the person who committed the  
21 crime, that would take away from his or her guilt in  
22 terms of -- this is hard. I'm not very articulate this  
23 morning. In terms of looking at something and saying,  
24 this person has only the reasoning level of a  
25 four-year-old, for instance. That would be a mitigating

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1 to sit in the back of the jury room and make that  
2 decision. So I want to honestly know, if you were in my  
3 situation, would you put yourself on the jury?

4 A. Would I put myself on the jury?

5 Q. Yes, ma'am.

6 A. Yes, ma'am, yes, I would.

7 Q. Do you have any questions? This is your last  
8 chance to ask me questions if you get on this jury until  
9 it's over.

10 A. No.

11 Q. Thanks, Miss Barnett. Appreciate your honesty.

12 THE COURT: Thank you.

13 Mr. Wentz.

14 VOIR DIRE EXAMINATION

15 BY MR. WENTZ:

16 Q. Good morning.

17 A. Good morning.

18 Q. As you've been told, my name is Kurt Wentz.

19 And along with Wayne Hill, we represent Charles Mamou.

20 I'd like, if I could, to give you a copy of your form  
21 and maybe go over it just a little bit as we talk. And,  
22 you know, I look at this. I sort of wonder if you had  
23 the benefit of the Judge's talk before you answered it,  
24 because everything is extremely logical and follows what  
25 you were told this morning, I think.

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1 circumstance to me.

2 Q. Okay.

3 A. That's the best way to describe it.

4 Q. As I talk to you, I'm going to talk to you  
5 basically about these Special Issues in the death  
6 penalty. But because I do so, I do not want you to  
7 think that guilt/innocence is not an issue. I'm sure if  
8 you become a juror in this case, you'll see it's going  
9 to be very hotly contested.

10 So just jump forward with me, and let's  
11 assume that we are at the punishment phase of a capital  
12 murder case. And when you get to the Special Issues, as  
13 the Judge told you, most of the words that you see in  
14 those Special Issues are words that you're going to  
15 define for yourself. And you're going to define  
16 basically for us, although you're not necessarily going  
17 to tell us what they mean, but for your verdict  
18 conceivably, with the exception of proof beyond a  
19 reasonable doubt. And this is your first jury  
20 experience?

21 A. Uh-huh.

22 Q. You get a definition of proof beyond a  
23 reasonable doubt. And one of the paragraphs is -- or it  
24 says that proof beyond a reasonable doubt must be proof  
25 of such a convincing character that you would be willing

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1 to rely and act upon it without hesitation in the most  
2 important of your own affairs. There is more to it; but  
3 in my mind, that's the very heart of the definition.  
4 And you know that that's the State's burden when it  
5 comes to Special Issue Number One.

6 And when you were talking to us about  
7 mitigating evidence, you use the obvious. And I don't  
8 mean to belittle you, but you said the explanation of  
9 mental retardation. Sometimes people will talk about a  
10 person's background as conceivably being mitigating.  
11 Something about the character can conceivably being  
12 mitigating. Something about the crime itself could be  
13 mitigating.

14 And obviously, Special Issue Number Two  
15 asks you to take that into consideration; but you can  
16 also use it in answering Special Issue Number One in  
17 terms of whether or not you think that person is going  
18 to be a future danger to society. How do you feel about  
19 the idea, in essence, determining whether or not  
20 somebody might receive the death penalty based on your  
21 ability to predict how they're going to act in the  
22 future? Because I think that that's exactly what that's  
23 asking. How do you feel about that?

24 A. I'm not particularly comfortable with that  
25 responsibility.

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1 Q. Okay. And, you know, one of the things the  
2 District Attorney spoke to you about, you've already  
3 reached an incredibly important decision in finding  
4 somebody guilty of capital murder. And you then come to  
5 this second -- or the first Special Issue; and you're  
6 asked, is that person going to be a future danger? You  
7 have no -- you've already committed society's worst  
8 crime. Are you open then -- and I guess you've told us  
9 that that Special Issue isn't necessarily going to be  
10 answered yes, is it?

11 A. No.

12 Q. When you're thinking about the Special Issue,  
13 you're asked to consider the probability of something  
14 happening in the future. And you have had it generally  
15 spoken to by the Judge this morning. You know it's not  
16 a chance, because that would obviously be unfair. And  
17 certainly, it's not a certainty, either. But what that  
18 word probability means to you is something that could  
19 cover a very large area. You would want to be very  
20 certain that somebody's going to commit these acts  
21 before they would be receiving the death penalty. But  
22 what it means to you is what is the most important  
23 thing.

24 And as the Judge told you, it's just not  
25 any criminal act. It's acts of violence that constitute

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1 a continuing threat to society. One of the things I  
2 think we sometimes overlook is the fact that the  
3 alternative punishment in these cases is life  
4 imprisonment. Do you think people might act differently  
5 in prison than they do in the street environment in  
6 which they might have committed the crime.

7 A. Yes.

8 Q. Would you agree that they would be under a lot  
9 more close scrutiny by guards and the rules the prison  
10 has that might limit their ability to be a bad person,  
11 if you will?

12 A. Uh-huh.

13 Q. One of the things that sometimes happens is  
14 when you're placed in a prison environment, or even,  
15 let's say, a structured institutional environment, you  
16 may violate some of the institution's rules. But they  
17 may -- those violations may not ascend to the level of  
18 an act of criminal violence.

19 Let's say, for example, it might be a  
20 crime within T.D.C. to have sugar or something like  
21 that. It might be a controlled substance. But in our  
22 daily life it's -- we have sugar around our homes. And  
23 that's a silly example, but you can see how violating a  
24 prison rule might not necessarily be a criminal act of  
25 violence.

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1 When you were going over Special Issue  
2 Number Two with the Judge and considering this thing  
3 called mitigating circumstances, did you ever think of  
4 the circumstances of the offense being grounds for this  
5 person to be getting a life sentence? And let me -- go  
6 ahead.

7 A. Well, I mean, no, I didn't.

8 Q. In your mind, could you see how the  
9 circumstances of an offense might be such that it would  
10 entitle the person to receive a life sentence?

11 A. Uh-huh, yes.

12 Q. In other words, there might be some cloud over  
13 what happened. And certainly you're convinced and you  
14 feel comfortable with the person being found guilty of  
15 capital murder, but there might be something about the  
16 way the crime unfolded that would cause you to feel that  
17 life is the appropriate punishment for that person.

18 A. Yes.

19 Q. Is there a question I should be asking you that  
20 I haven't?

21 A. I can't imagine. You're the expert.

22 Q. Okay. If you told me one, I'd be happy to ask  
23 it of you, because I really don't have anything more I'm  
24 going to ask you.

25 A. Okay.

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1 Q. Okay?

2 A. Yes.

3 Q. Thank you.

4 THE COURT: Thank you.

5 (Court admonishes juror.)

6 LATONYA HARRIS,

7 having been first duly sworn, testified as follows:

8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q. Miss Harris, how are you feeling?

11 A. Better.

12 Q. Miss Harris, there was some stuff that we  
13 talked about Friday that we didn't get to visit with you  
14 about. You heard some stuff this morning. Out of what  
15 you have heard so far, do you have any questions for me?

16 A. No, not really.

17 Q. We talked -- well, when you say not really,  
18 don't suppress them if you have them.

19 A. I don't have any questions.

20 Q. We talked -- one of the things that you don't  
21 know was, you don't know -- you might have on the  
22 questionnaire -- is that if you are selected as a juror,  
23 we're going to begin the evidence in the case on Monday,  
24 October the 4th. Everybody, the lawyers for both sides,  
25 are satisfied that the whole case will take more than

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1 whether I believe him or not; but on the basis of what  
2 they say, my job is to arm you in the Court's charge  
3 with all of the rules that come into play as a result of  
4 their testimony. So out of all those rules that will be  
5 in the Court's charge, they're going to be there because  
6 of what witnesses said. But your job, as a juror, is to  
7 extract the believable portions of what the witnesses  
8 say and, therefore, the laws that are applicable to the  
9 believable portions of the testimony and use them in the  
10 verdict that you reach. Have you ever been a juror  
11 before?

12 A. No.

13 Q. I cut you off before you answered my question  
14 about that.

15 A. No.

16 Q. The punishment business that we talk about  
17 today, you might find it's a little peculiar or a little  
18 curious as to why we spent so much time talking about  
19 the punishment phase of the trial when I've already told  
20 you that if the defendant's not found guilty, we never  
21 get to the punishment phase. So we're talking about it  
22 before a determination of guilt is made, and the reason  
23 for that is this: This is the only chance we'll have to  
24 talk to you, and we can't talk to you about just the  
25 guilt phase and the rules that can come into play, and

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1 one work week, but no more than two. So if my -- I'm  
2 thinking, in my mind, that's no later than the 15th of  
3 October, which is a Friday. So that's the anticipated  
4 duration.

5 I see from your questionnaire that you  
6 have a thirteen-month-old.

7 A. Uh-huh.

8 Q. Any problems that tending to the child would  
9 cause you by being a juror for two weeks?

10 A. No. I mean, if I was at work, he would be at  
11 daycare, so --

12 Q. Recognizing that inconvenience perhaps would be  
13 different, but nothing that you couldn't overcome?

14 A. No.

15 Q. This process that we're in, Miss Harris, I  
16 think -- and this is just my notion -- we're trying to  
17 set out all of the laws -- not all of them -- but the  
18 primary laws that do come into play during the course of  
19 a trial like this. Whether a law does come into play or  
20 not will depend upon the testimony presented in the  
21 case.

22 We had mentioned the other day, the jury's  
23 job is that you determine the credibility of the  
24 witnesses. My job is not to do that. My job is to  
25 listen to what they say. And it makes no difference

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1 if you then find the defendant guilty of capital murder,  
2 then talk to the jury about the punishment phase;  
3 because a juror might say, well, I didn't know that was  
4 going to be a rule at this punishment phase. I'm  
5 telling you right now, Judge, I can't follow that rule.  
6 That means I'd have to excuse that juror. That means  
7 we'd only have eleven of them. I got to have twelve.  
8 That means it would be a mistrial, and everything we had  
9 done would have been a total waste of time. So that's  
10 why we put everything up front.

11 Don't read into the fact we're talking  
12 about punishment today before the trial ever starts as  
13 being an indication that the defendant's going to wind  
14 up pleading guilty, because he's not, or that we've all  
15 thrown in the towel on his presumption of innocence,  
16 because we have not.

17 This is the only time you'll know how a  
18 prospective juror feels from the beginning to the end.  
19 With that additional piece of information that you  
20 missed the other day, do you have any questions of me so  
21 far?

22 A. Not so far.

23 Q. Well, I'm going to turn you over to the nice  
24 lawyers. If you have any questions for them, ask them.  
25 Okay?

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1 A. Okay.

2 THE COURT: Mr. McClellan.

3 VOIR DIRE EXAMINATION

4 BY MR. MCCLELLAN:

5 Q. Miss Harris, my name is Lyn McClellan. Along  
6 with Claire Connors, we represent the State of Texas in  
7 this case. I want to kind of go over your questionnaire  
8 and follow up on some of your answers you had there. In  
9 order to make that a little easier, let me see if I can  
10 get a copy of your questionnaire and let you look at  
11 Page 11, at the bottom. It says: Do you have any  
12 religious, moral, ethical considerations that would  
13 prevent you from sitting in judgment of another person.  
14 See that question?

15 A. Uh-huh.

16 Q. And you checked yes and then said, God is the  
17 ultimate Judge; so no matter what one thinks, he has the  
18 last word. If that means as a juror, or jury, he  
19 decides your fate, then so be it. Can you tell me what  
20 your -- what your thoughts are about that?

21 A. Well, basically, I feel that we're all put here  
22 for a reason. And if being a juror means that you  
23 ultimately have to decide someone's fate, as far as the  
24 death penalty or life imprisonment, then that's the way  
25 it is. He's the ultimate Judge, God is. I'm saying

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1 that if a prisoner or a person has life imprisonment or  
2 the death penalty, regardless of what he does do or how  
3 the outcome is, his ultimate fate is not decided by us  
4 anyways, so --

5 Q. Right. I understand that. And a lot of people  
6 go and say -- some people come and say, I don't think we  
7 ought to be judging, because it's not for me to judge.  
8 God's going to judge. God's going to ultimately take  
9 care of that situation, so what we do here is of little  
10 or no moment. Do you have -- what is your church's  
11 position on the death penalty? Do you know?

12 A. Right now I'm not involved in the church. I'm  
13 seeking a new church home, but I'm not currently  
14 involved in the church.

15 Q. What is your position on the death penalty,  
16 based on your religious teachings and upbringing?

17 A. My position is like I stated. I mean,  
18 everything is here for a reason. It's kind of, in my  
19 mind, a way of checks and balance maybe. I mean, life  
20 is just that way. I mean, the world has become in a way  
21 that people do things that cause certain reactions.

22 Q. Right.

23 A. And they have to be responsible for their  
24 actions.

25 Q. Now, in that questionnaire it says: Do you

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1 have any religious, moral, or ethical considerations  
2 that would prevent you from sitting in judgment of  
3 another person? Do you? You checked yes.

4 A. I checked yes, only because I truly believe  
5 that no matter what we say as individuals -- because we  
6 all are critical of one another in a sense -- God is  
7 still the ultimate judger. I mean, regardless of what  
8 we'd choose or think that's right for a person, he still  
9 controls your destiny and faith. That's why I checked  
10 yes.

11 Q. Do you mean that whatever is going to happen to  
12 the defendant on trial is in God's hands, or do you mean  
13 that whatever decision I'm going to make is in God's  
14 hands, or both?

15 A. Kind of both.

16 Q. Okay. All right. I'm trying to get a feeling  
17 for what your thoughts are. So, your position is the  
18 outcome of this case is, God possibly already knows what  
19 it is. Would that be right or wrong?

20 A. That's a positive in my -- the way I would  
21 feel.

22 Q. That's what you would feel. Okay. And that  
23 whenever going through this process, we're going through  
24 the process and God is going to decide and direct  
25 everybody. And that's how it's going to end up. Is

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1 that the way --

2 A. Well, I mean, I just feel that, personally, all  
3 of our destiny and faith has been chosen. So if we are  
4 here to say whether he gets the death penalty or life  
5 imprisonment, that's the way it's set. I mean, I can't  
6 say that's fair or unfair. It's just the way it should  
7 be.

8 Q. How does that relate to, if it does, your  
9 ability to be on a jury and listen to evidence and make  
10 your decision based on the evidence that you hear and  
11 the law given to you by the Court? Would you be able to  
12 go through that type process? In other words, the law  
13 says you have to take an oath to be a juror, to a true  
14 verdict render based on the law given to you by the  
15 Court and the evidence from the witness stand.

16 Somebody else might say, well, I'm going  
17 to be guided by what God tells me to do, and I'm really  
18 not concerned about these other things. I'm just trying  
19 to get a feel for where you are in this relationship.

20 A. I think, given the evidence or the testimony in  
21 the case and the laws, I think -- I guess with  
22 everything stated as facts, I could say whether or not  
23 this person deserves or does not deserve the death  
24 penalty.

25 Q. Okay. Do you think the death penalty is an

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1 appropriate punishment for certain types of crimes?

2 A. For certain types of crimes, yes, I do.

3 Q. What kinds of cases or types of crimes do you  
4 think it's proper for?

5 A. I would think it would be proper in a case such  
6 as someone who has no regard for human life; cannot,  
7 will not, refuses, is not even open to the thought of  
8 being rehabilitated. So something like that, yes, I  
9 would think they would deserve it.

10 Q. How do you think you would know whether someone  
11 is open to be rehabilitated? What do you think would be  
12 helpful in making that determination?

13 A. I guess if I had information on that person, as  
14 far as what their life was like previously, the  
15 circumstances involving the incident.

16 Q. Page 12, Question Number 58, it says: What are  
17 your feelings about the death penalty? You said, It is  
18 a form of checks and balance system that sometimes is  
19 given justly and sometimes not. What comes to mind when  
20 you think of where it's not given justly? Do you have  
21 some things in mind or cases in mind you've heard about?

22 A. Well, I mean, you hear about people being  
23 wrongly accused of things. And before we got DNA  
24 evidence and certain things like that, people were  
25 executed wrongly. So sometimes it was given unjustly

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1 and sometimes it was --

2 Q. How does that square with God is the ultimate  
3 determiner? I mean, God ultimately guides and directs  
4 us the way we're going.

5 A. That's my personal thought on it, I mean; but  
6 ultimately, if that's your fate, that's your fate. If  
7 my fate is to walk out from this building, then get hit  
8 by a car, that's my fate. So I can't say --

9 Q. Do you think you have any control over your  
10 fate? Anything you can do to change that or alter that,  
11 cause it to be?

12 A. Yes.

13 Q. Okay. What control do you think you have?

14 A. I think, given your inner sense, that you can  
15 tell wrong from right. You know, you can keep yourself  
16 out of a lot of problems.

17 Q. You indicated, also, on Page 9 about, ever had  
18 someone, a friend or family member, convicted of a  
19 crime? You said your brother was convicted of a felony,  
20 but it was dismissed after the whole truth came out?

21 A. Uh-huh.

22 Q. What felony was he convicted of?

23 A. I think it was some harmful endangerment to a  
24 child.

25 Q. Injury to a child?

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1 A. Injury to a minor, something like that.

2 Q. And you say he was convicted of it. Was he  
3 convicted or charged with it?

4 A. He actually went to jail for it. And he stayed  
5 in jail for a year before, I guess, his case came back  
6 up. And when all the evidence was presented, at that  
7 time they dismissed the charges completely.

8 Q. What came back? What came up that changed?

9 A. Because at the time his now wife, but  
10 girlfriend at the time, didn't tell the whole truth  
11 about the story. And, of course, when the child was  
12 involved, it was like no question the child was injured  
13 in the act; but my brother didn't purposely injure the  
14 child.

15 Q. What injury did the child sustain?

16 A. Well, it involved gasoline. And I guess the  
17 baby, at the time, went into -- he started throwing up  
18 and suffered inhalation.

19 Q. Is the child okay now?

20 A. Yeah, he's fine.

21 Q. How old was the child at the time?

22 A. Possibly a couple of months old.

23 Q. Anything in your life experiences or anything  
24 in your beliefs that would keep you from being a juror  
25 in a case like this?

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1 A. I really don't -- I mean, I've heard some of  
2 the things that was said about the case; but I really  
3 don't know the gist of the whole case. I mean, I don't  
4 think there is anything that would prevent me from being  
5 a juror.

6 Q. You understand the jurors would be called upon  
7 to make decisions that, in answer to those questions,  
8 could result in the death penalty being imposed? Some  
9 people come and say, well, I don't think I could ever  
10 make that type of life or death decision. I don't think  
11 it's my position. I don't think I could ever get  
12 evidence that would ever convince me sufficiently to  
13 make that type of decision.

14 Other people say, well, I'd have to hear  
15 what they have to say. How do you feel?

16 A. I honestly couldn't tell you. I couldn't tell  
17 you until I was -- I knew everything. I couldn't say  
18 one way or the other that I could make that decision or  
19 not.

20 Q. One last thing is the burden of proof on the  
21 State is beyond a reasonable doubt. We must prove our  
22 case beyond a reasonable doubt. That's the same burden  
23 in every criminal case throughout, whether it be child  
24 endangerment, whether it be theft, whether it be capital  
25 murder, or whatever. Some people would say, because in



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1 a death penalty case, seeking the actual punishment,  
2 that they would require a higher burden of proof because  
3 we're seeking a higher level of punishment.

4 If we're just trying to decide whether or  
5 not to send somebody to the penitentiary or how much  
6 time they spend in jail, that would be one thing; but  
7 we're talking about taking their life. They would  
8 require a higher amount of evidence. Even though the  
9 law says the burden is the same, they would still  
10 require more to make that life and death type decision.  
11 How do you feel about that?

12 A. I think it should be the same.

13 Q. Thank you, ma'am.

14 MR. MCCLELLAN: And I'll pass the  
15 venireman.

16 THE COURT: Thank you.

17 Mr. Wentz.

18 VOIR DIRE EXAMINATION

19 BY MR. WENTZ:

20 Q. Good morning.

21 A. Good morning.

22 Q. As you've been told, my name is Kurt Wentz.  
23 This is Charles Mamou. And Wayne Hill will also be  
24 representing Charles in the case. You have a copy of  
25 the questionnaire with you, and I'm going to go over

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1 that with you in just a little bit. But as we started,  
2 I think you've told us a lot of important things about  
3 you. And I think you basically, to sum up, you are a  
4 person who has a great deal of faith in God, and  
5 religion is very important to you; but you've told us  
6 that you could sit here and listen to the evidence and  
7 make a decision based on the evidence and the law that  
8 is given to you by the Judge. Does that pretty well sum  
9 up what you've told us?

10 A. Yes.

11 Q. And that's at the guilt/innocence phase, and at  
12 the punishment phase, also. I'm going to do something  
13 that's maybe a little bit backwards, so excuse me for  
14 doing it in this backwards way. I'm going to talk to  
15 you mostly about the punishment phase of a capital  
16 murder case. But I don't want you to think that I'm in  
17 any way conceding Charles' guilt or innocence in this  
18 particular case. Because if you become a juror, I think  
19 you will find that it will be hotly contested, if you  
20 will. Okay?

21 You understand from the Judge's  
22 explanation that these Special Issues each are to be  
23 answered independently of one another. In other words,  
24 they have their own answer. There is nothing automatic  
25 about them. In other words, sometimes there is a

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1 problem. If somebody feels they're guilty of capital  
2 murder, that the answers to those Special Issues are  
3 pretty well answered already, that somebody who would be  
4 guilty of capital murder would necessarily be a future  
5 danger to society, or somebody who is guilty of capital  
6 murder, there is no reason why they should ever get a  
7 life sentence. And I think that you can understand from  
8 the explanation that that's not really the way this  
9 whole process works. You take the evidence and you  
10 apply it to each situation independently. Would you  
11 agree?

12 A. Yes.

13 Q. And I think one of the things that is so  
14 important is the Special Issues that you have to decide,  
15 they're based in words that we don't have any definition  
16 for, as attorneys, except for proof beyond a reasonable  
17 doubt. So what the words mean for you is what they mean  
18 for you. You use the word probability, quite  
19 conceivably, in your daily life fairly frequently. And  
20 I think the Judge has indicated to you in this  
21 situation, in this context, it means certainly more than  
22 a chance, but not necessarily a hundred percent  
23 certainty. But when you look at it in the context of  
24 what we're doing, deciding whether or not somebody might  
25 lose their life, I think you can understand why it has a

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1 certain magnitude to it, a certain importance. Would  
2 you agree?

3 A. Yes.

4 Q. And it certainly is, at the very least, more  
5 likely than not. Would you agree?

6 A. Yes.

7 Q. In Special Issue Number Two, had you thought or  
8 used the word mitigating before in terms of thinking  
9 about how you might punish somebody for what they had  
10 done?

11 A. No.

12 Q. Do you understand how the word is used in this  
13 context for answering the Special Issues, in a sense,  
14 punishing somebody?

15 A. After listening to the Judge, yes.

16 Q. And one of the things that's possible is to  
17 listen to the facts of the case, the circumstances of  
18 the offense, the way it's put in Special Issue Number  
19 Two, and consider whether or not there is something that  
20 in and of itself might warrant somebody receiving a life  
21 sentence. Do you think there could conceivably be  
22 something in the case itself that might warrant somebody  
23 receiving a life sentence?

24 A. Yes.

25 Q. And sometimes we talk about the character and

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1 background of somebody. And when it comes out of a  
2 lawyer's mouth, it comes out as some cheap cliché. We  
3 don't intend it as a cheap cliché. We go, oh, he's got  
4 a bad background. And here comes the bad background  
5 excuse everyone. Here it comes. Could you honestly  
6 consider somebody's background in answering Special  
7 Issue Number Two, or is it, as I demeaningly referred to  
8 it as, a cheap cliché?

9 A. I think I would have to consider their  
10 background.

11 Q. Do you understand why I make that negative --  
12 and I don't mean to be insulting, but sometimes he  
13 didn't get what he wanted as a child; therefore, you  
14 know, give him everything he asks for as an adult?

15 A. I understand what you're saying with that; but  
16 I mean, when you say background, I'm thinking, has this  
17 person committed serious crimes before? What was the  
18 severity of the crime? That kind of thing. I'm not  
19 thinking of --

20 Q. Did he get cake for his birthday?

21 A. Yeah, that kind of thing.

22 Q. Could you see sometimes somebody's background,  
23 how they were raised in their family circumstance could  
24 actually also be a mitigating circumstance?

25 A. Yes, I can.

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1 Q. Let me just look at your questionnaire for a  
2 second or two. You're asked on Page 6 to agree or  
3 disagree with some statements. And one of them, No. 13,  
4 is: Anyone can overcome a neglectful and abusive  
5 childhood. And you said you generally agree with that.  
6 Can you tell me why you formed that opinion or why you  
7 believe that?

8 A. Because sometimes abuse and neglect can be so  
9 severe that, mentally, they can't overcome it. It's  
10 just no way of unlocking all of that in the mind, and  
11 that's why I say I generally agree.

12 Q. Okay. On Page 17 you're asked: Do you believe  
13 that mitigating evidence should be used? And you very  
14 honestly put undecided when you filled the questionnaire  
15 out. Can you tell me why you answered that question in  
16 that particular manner?

17 A. On Page 13?

18 Q. Yes, on Question 68.

19 A. Because at that time I didn't clearly  
20 understand what mitigating, in that sense, meant.

21 Q. And is there anything about you that you think  
22 I should know and Charles should know before we make up  
23 our mind in deciding whether or not you should be on  
24 this jury?

25 A. Anything like -

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1 Q. Anything you want to tell us, anything you  
2 think we should know.

3 A. Covers such a broad --

4 Q. I'm phrasing it as broadly as possible.

5 A. Well, I mean --

6 Q. I've giving you as many options as I can.

7 A. I don't know. I mean, I don't know what you're  
8 asking.

9 Q. I'm just asking you, is there something you  
10 would like to tell me about yourself you think I should  
11 know about you before I sit down and not ask anymore  
12 questions?

13 A. That I'm a sincere person. A lot of things I  
14 believe, I believe strongly in my heart. So if I  
15 believe it, it's just --

16 Q. Just that?

17 A. Just that.

18 Q. Do you think somebody can be rehabilitated even  
19 if they've committed a serious crime?

20 A. Yes, I do.

21 Q. Thank you very much.

22 THE COURT:

23 (Court admonishes juror.)  
24  
25

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1 THE STATE OF TEXAS )

2 COUNTY OF HARRIS )

3 I, Pamela Kay Knobloch, Official/Deputy  
4 Official Court Reporter in and for the 179th District  
5 Court of Harris County, State of Texas, do hereby certify  
6 that the above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the  
9 parties to be included in this volume of the Reporter's  
10 Record, in the above-styled and numbered cause, all of  
11 which occurred in open court or in chambers and were  
12 reported by me.

13 I further certify that this Reporter's Record  
14 of the proceedings truly and correctly reflects the  
15 exhibits, if any, admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$\_\_\_\_\_ and  
18 was paid by Harris County.

19 WITNESS MY OFFICIAL HAND this the \_\_\_\_ day of  
20 \_\_\_\_\_, 2000.

21  
22 Pamela Kay Knobloch, Texas CSR No. 1650  
23 Expiration date: 12/31/2000  
24 Official Court Reporter, 179th District Court  
25 Harris County, Texas  
301 San Jacinto  
Houston, Texas 77002  
713.755.6340

20 APPELLANT: CHARLES MAMOU, JR.  
21 CAUSE NO. 800112  
22  
23  
24  
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## REPORTER'S RECORD

VOLUME 12 OF 25 VOLUMES

TRIAL COURT CAUSE NO. 800112

CHARLES MAMOU, JR. ) IN THE DISTRICT COURT

Appellant )

)

VS. ) HARRIS COUNTY, TEXAS

)

THE STATE OF TEXAS )

Appellee ) 179TH JUDICIAL DISTRICT

\*\*\*\*\*

## VOIR DIRE EXAMINATION

\*\*\*\*\*

On the 21st day of September, 1999, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Bob Burdette, Judge Presiding, held in Houston, Harris County, Texas:

Proceedings reported by computer aided transcription/stenograph machine.

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3

1 THE COURT: As I understand, there is an  
2 agreement by and between the parties that Venireperson  
3 Number 104, that being Miss Janet Johnson, and  
4 Venireperson Number 107, that being Craig Baker, for  
5 various reasons may be excused.

6 Mr. McClellan, is that your agreement?

7 MR. MCCLELLAN: Yes, Your Honor.

8 THE COURT: Is it also Miss Connors'?

9 MR. MCCLELLAN: Yes, Your Honor.

10 THE COURT: Yours, Mr. Hill?

11 MR. HILL: Yes, Your Honor.

12 THE COURT: Yours, Mr. Wentz?

13 MR. WENTZ: Yes, Your Honor.

14 THE COURT: And yours, Mr. Mamou?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Is it your request that each  
17 of these be excused?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Very well. They'll be  
20 excused.

21 (Jury panel brought in.)

22 THE COURT: Good morning, ladies and  
23 gentlemen. To remind you, we're here visiting about  
24 your prospective service as a juror in the case of State  
25 of Texas versus Charles Mamou, Jr. Mr. Mamou is

5

1 trial, if we do have both phases, I'll give you -- or  
2 you'll be given in writing in the Court's charge all of  
3 the rules that have come into play during the course of  
4 the trial. You'll have the Court's charge with you back  
5 in the jury room in writing throughout the whole time  
6 you're deliberating. So for that reason, you can see  
7 that you don't need to memorize what it is we're talking  
8 about here today.

9 I want, however, you to feel more  
10 comfortable with what can go on during the course of a  
11 trial like this. Kind of like the better prepared you  
12 are, the better you can play, so to speak. So it's for  
13 that reason we're going to talk about some things. We  
14 talked the other day about the fact that a trial like  
15 this, actually any criminal trial for that matter, can  
16 come in two parts. The first part of the trial, the  
17 jury's only concern is going to be with deciding whether  
18 the defendant is or is not guilty of the offense. If  
19 the jury finds the defendant to be not guilty, the case  
20 is over with and that's the end of that.

21 If the jury finds the defendant guilty, we  
22 come back and we have a second stage of the trial. At  
23 the second stage of the trial, additional evidence can  
24 be presented to you for the purposes of assisting you in  
25 answering two Special Issues or two questions that we

4

1 represented by his attorneys, Mr. Wayne Hill, who just  
2 went through one of these doors, Mr. Kurt Wentz. The  
3 State of Texas is represented by two of her Assistant  
4 District Attorneys, Mr. Lyn McClellan, Miss Claire  
5 Connors.

6 As we discussed the other day, this  
7 defendant stands charged by indictment with the offense  
8 of capital murder that is alleged to have occurred in  
9 Harris County, Texas, on or about the 7th day of  
10 December of 1998. I want to spend some time visiting  
11 with you today about some things other than what we  
12 talked about the other day when the whole group was  
13 together.

14 Before we start, let me say this: I know  
15 that we're going to talk about things that you have  
16 never before in your life thought about, and there is no  
17 reason in the world why you ever should have. Please  
18 don't get frustrated if you feel that what we're talking  
19 about is confusing. Please don't throw your hands up in  
20 the air to yourself, so to speak. Don't get frustrated  
21 with yourself about what we're going to talk about.  
22 Don't feel that you need to commit to memory what we're  
23 talking about, because you don't.

24 And the reason that you don't is this: At  
25 the conclusion of the evidence at each phase of the

6

1 touched on very briefly the other day. We're going to  
2 talk about that in detail in just a little bit. And  
3 it's how the jury answers those two questions that  
4 determines what punishment the law requires that I  
5 impose.

6 So since the purpose for the testimony in  
7 each phase of the trial is different -- that is to say,  
8 your verdict is going to be, is he guilty on the one  
9 hand or not? And on the other hand, if he is guilty,  
10 what is the appropriate punishment? Therefore, the  
11 focus of the evidence is going to be different.

12 At the first phase of the trial, the  
13 evidence is going to focus on the crime that was  
14 committed. Who did it? Where was it done? How was it  
15 done? When was it done? What were the circumstances?  
16 What was the prior relationship of the parties, if there  
17 was a prior relationship? What was the motive for  
18 having done it, if the motive is known? Those are all  
19 things you'll hear at the first phase of the trial.

20 If the jury finds the defendant guilty, at  
21 the second phase of the trial the focus of the evidence  
22 is going to shift; and the focus of the evidence at the  
23 second stage of the trial is going to be on the  
24 character and the background and the personal moral  
25 responsibility of the defendant involved in the

7

1 commission of the crime, meaning, you know about the  
2 crime.

3 Now we want you to know about the person  
4 who did it. Might be a whole lot of good traits. Might  
5 be a lot of bad traits. Might be some of each. But we  
6 want you to be able to take the defendant on trial, add  
7 to it the facts of the case so that you'll be armed with  
8 information as to how to answer the questions that we're  
9 going to ask you.

10 The questions we're going to be asking you  
11 are over here on this board, and we're going to talk  
12 about that in a couple of minutes. First off, I'll tell  
13 you the questions are going to be asked in the order in  
14 which they appear on the board. The words which are on  
15 the board are the words that are going to be used in the  
16 question. So this is specifically what you're going to  
17 be asked to decide in the event you find the defendant  
18 guilty of the offense of capital murder.

19 Please follow along with me if you care  
20 to. It might make this a little bit simpler. The first  
21 question will ask you: Do you find from the evidence  
22 beyond a reasonable doubt that there is a probability  
23 that the defendant would commit criminal acts of  
24 violence that would constitute a continuing threat to  
25 society? Can you see no matter who the defendant is, no

9

1 the case for the purpose of asking yourself this  
2 question: Is there a sufficient mitigating  
3 circumstance, or perhaps circumstances, that make you  
4 believe that a life sentence would be a more appropriate  
5 verdict than a death sentence?

6 Again, no matter who the defendant is, no  
7 matter what the case is, no matter who the victim was,  
8 there's never but two possible answers to that question,  
9 yes or no. Again, you'll answer that question the way  
10 that you feel the evidence dictates. If the jury should  
11 answer yes to that first question, and if the jury  
12 should answer no to that second question, the law says I  
13 have no choice, I have no option, and I have no  
14 discretion. I must sentence the defendant to death, and  
15 that's exactly what I'll do.

16 If the jury should answer those two  
17 questions in any way other than yes and no, in that  
18 order, once again, the law says I have no choice, I have  
19 no option, I have no discretion. I must sentence the  
20 defendant to life, and that's exactly what I'll do.

21 So, first off, you can see the juries in  
22 the State of Texas don't go out and sentence this person  
23 to life, that person to death. What jurors do is take  
24 the evidence that exists in the case and answer those  
25 two questions. And you're entitled to know what the

8

1 matter what case it is, no matter who the victim was,  
2 there's never ever but two possible answers to that  
3 question, either yes or no? And the answer to that  
4 question, yes or no, is whichever way you believe the  
5 evidence indicates.

6 The second question that you'll be asked  
7 to answer is this: Taking into consideration all of the  
8 evidence, including the circumstances of the offense --  
9 now, you see, that's going to be what you heard at the  
10 first half of the trial about the crime -- also  
11 including the defendant's character and background and  
12 his personal moral culpability, which is the same as  
13 responsibility. That's going to be what you heard at  
14 the second part of the trial. And the personal moral  
15 responsibility of what we're talking about is if there  
16 is a situation, if there is one where there are multiple  
17 defendants involved in a particular crime. What was the  
18 comparative blameworthiness of this defendant on trial  
19 as compared to the other ones whose trials will be held  
20 separately from this one?

21 So -- also taking into account the  
22 defendant's character and background, the personal moral  
23 culpability. So you can see that the first half of the  
24 second question does absolutely nothing more than  
25 instruct the jury to go back over all of the evidence in

10

1 effect of your answers is going to be and what kind of  
2 sentence I'll pass. And you're entitled to know that a  
3 yes and a no answer is a death sentence. A no answer to  
4 the first question is a life sentence. A yes answer to  
5 the first question and a yes answer to the second  
6 question is a life sentence.

7 So you can see -- I know that you have  
8 probably read about, heard about cases, capital murder  
9 cases, where a person's convicted of capital murder; and  
10 in some cases a life sentence is imposed, some cases a  
11 death sentence is imposed. And the reason there are  
12 different sentences imposed is because there is  
13 different evidence in each case. These questions never  
14 change. This is the standardized process. The words  
15 never change. The questions never change. The order in  
16 which the questions are asked never changes.

17 What always does change is every defendant  
18 is different from every other defendant. In one  
19 imaginary case you might have a seventeen-year-old girl  
20 as a defendant, who's never done anything wrong in her  
21 life. In another imaginary case you might have a  
22 forty-five-year-old, six-time ex-convict who spent his  
23 life killing people. All the facts are different. All  
24 the circumstances are different. All the victims are  
25 always different. All the witnesses who testify are

11

1 always different. And all the juries are always  
2 different.

3 For example, we could have in this  
4 courtroom, if we could fit them in here, four juries  
5 listening at exactly the same time to exactly the same  
6 testimony from exactly the same witnesses and have all  
7 four of those juries go out in four different jury  
8 deliberation rooms, and we'll come up with four  
9 different verdicts; because those twelve people on one  
10 jury evaluate the testimony differently than the other  
11 twelve people.

12 So, that's why every single case is as  
13 unique as an individual's fingerprint. There are no two  
14 cases that are ever alike, because the witnesses are  
15 changed. The defendant's are changed. The victims are  
16 changed. The facts are changed, and the jury. That's a  
17 jury's decision, and a life sentence may be imposed.  
18 That may very well be the absolute most appropriate  
19 verdict in the world for that particular case.

20 In another capital murder case, when these  
21 issues are answered in such a way that the defendant's  
22 sentence is imposed, that also may be the absolutely  
23 most appropriate verdict that could ever be returned in  
24 that case because of the uniqueness of the circumstances  
25 in that case.

13

1 second phase of the trial, and if a juror says, well,  
2 wait just a second. I didn't know that that particular  
3 rule was a piece of the deal in this case. I'm going to  
4 tell you right now, I'm going to refuse to follow that  
5 law, because I simply don't believe in it. That means  
6 I'd have to excuse that juror. That means I only have  
7 eleven jurors. I need to have twelve. If I don't have  
8 twelve, I have to declare a mistrial, excuse the eleven  
9 that I do have, start the case all over again, and  
10 everything we would have done would have been a total  
11 waste of time. So that's why we have to talk about  
12 everything that can come into play now, before the trial  
13 begins. So please don't think that because we're  
14 talking about the punishment phase now, the defendant's  
15 getting ready to plead guilty, because he's not. Please  
16 don't believe that Mr. Hill and Mr. Wentz are getting  
17 ready to throw in the towel and are committed to the  
18 notion the jury's going to find the defendant guilty,  
19 because they're not. Please don't think we've given up  
20 on the defendant's presumption of being innocent or  
21 being not guilty at the beginning of trial, because  
22 we're not. The only time we're ever going to get to  
23 talk to you about this stuff is before the trial ever  
24 begins. So keep that -- there is nothing nefarious or  
25 tricky about this going on at all.

12

1 So can you see that every case starts off  
2 being absolutely different than anything else? It has  
3 its own personality and own identity. Let's talk about  
4 these questions in a little more detail. And before we  
5 do, let me tell you that we're going to spend some time  
6 today talking with you now, as well as with you  
7 individually, about things that are going to occur, or  
8 can occur, I should say, at the punishment phase of the  
9 trial if a defendant is found guilty of capital murder.

10 You may say to yourself, well, why in the  
11 world are you all talking about the punishment phase of  
12 a trial when you told us yesterday, just the other day,  
13 before the trial begins and during the course of the  
14 trial, all defendants are presumed to be not guilty. So  
15 why do we talk about the punishment phase of the trial?  
16 And that's a good question.

17 The reason is this: If we don't talk to  
18 you about the punishment phase now, about the law that  
19 can come into play, we're never going to be able to talk  
20 to you about it. For example, if we picked a jury,  
21 talked to them only about the laws that can come into  
22 play at the first phase of the trial, and if a jury  
23 finds that imaginary defendant guilty of capital murder,  
24 and if we come back and we get the jury together and we  
25 talk about the laws that could come into play in the

14

1 Now having said that, in the Court's  
2 charge that you're going to be given at the second phase  
3 of the trial are the rules that have been raised by the  
4 testimony that was presented. There are going to be a  
5 lot of terms defined for you, and there are going to be  
6 a lot of terms that aren't going to be defined for you.  
7 And if your question is, well, how do you people decide  
8 what words you're going to define for us and what words  
9 you aren't, I'm telling you the answer is really simple.  
10 And the answer goes just like this: There is no  
11 justifiable reason why we ought to expect you folks to  
12 give of your time, make yourselves available for jury  
13 service, and be armed with legal definitions as to what  
14 words are being used by lawyers during the course of the  
15 lawyering business.

16 So if we're going to be using some word,  
17 some term that's peculiar to the lawyering business,  
18 we're going to define it for you. If we're going to be  
19 using a word that you use, we're not going to tell you  
20 what those words mean; because you already know what it  
21 means. That's how we make that decision. And if I go  
22 back to what I said at the beginning last Friday,  
23 whenever it was, this really is not complicated. Don't  
24 try to make it into something it's really not. It's  
25 perfectly simple.

15

1 All this is about is listening to what the  
2 witnesses say, evaluate what the witnesses say, and  
3 react to what the witnesses say. React in terms of  
4 coming up with a verdict based upon how you evaluate the  
5 testimony of the witnesses. That's all this is about.

6 So let's talk -- is there something wrong?  
7 Let's talk a couple of seconds about the words that are  
8 contained in these two questions. First off, in the  
9 first question, first thing we see is: Do you find from  
10 the evidence beyond a reasonable doubt? We talked  
11 about a reasonable doubt the other day. We talked about  
12 the definition that you'll be given for that word. We  
13 talked about it from the standpoint of the fact that  
14 it's up to the State to prove a person's guilt beyond a  
15 reasonable doubt. We talked about the fact that up  
16 until the time they do prove a person's guilt beyond a  
17 reasonable doubt, the defendant is not guilty. So at  
18 the beginning of the trial, the jury's verdict starts  
19 off being not guilty, unless the State's evidence proves  
20 beyond a reasonable doubt that that verdict should be  
21 bumped up, so to speak, from not guilty bumped up to  
22 guilty.

23 At the second phase of the trial, in order  
24 to get the death penalty imposed, we know the answer to  
25 this first question has got to be yes; because it takes

17

1 the answer should be yes. Does anybody have any  
2 questions about that? Anybody doesn't see how I got to  
3 the point that I got?

4 Okay. Let's continue with the first  
5 question. Do you find from the evidence beyond a  
6 reasonable doubt that there is a probability? Now the  
7 word probability is not going to be defined for you,  
8 because you folks use that word all the time yourselves.  
9 Whatever it is, I can't tell you or give you a  
10 definition of the word probability. I am permitted to,  
11 by comparison, tell you that whatever the word  
12 probability does mean to you, there are two things that  
13 it can't mean. One of them is this: Whatever the word  
14 probability means to you, it must be something that is  
15 more than a possibility. Anything could possibly  
16 happen. Because it could possibly happen does not mean  
17 it's probably going to.

18 On the other hand, whatever the word  
19 probable means to you, it cannot mean something you have  
20 as a certainty. Because something is probably going to  
21 happen does not mean it's certain to happen. Now let's  
22 take in context the word probability, as used in this  
23 question. The State's got to prove the existence of a  
24 probability that a defendant will commit future acts of  
25 criminal violence. Can you see how grossly unfair it

16

1 a yes and a no, in that order. We see from the phrase  
2 at the beginning of the question: Do you find from the  
3 evidence beyond a reasonable doubt? That means every  
4 time we see the phrase, do you find from the evidence  
5 beyond a reasonable doubt -- that means the State has to  
6 prove what the answer to that question should be. Just  
7 like at the guilt phase, the defendant starts off being  
8 not guilty unless the State's evidence proves he is  
9 guilty.

10 At the second phase, this first question  
11 starts off being answered no unless the State's evidence  
12 proves that the answer to that question should be bumped  
13 up to a yes. That means that at the beginning of the  
14 second phase in every capital murder case where a  
15 defendant has been found guilty of capital murder, it is  
16 presumed that the appropriate punishment should always  
17 be life. And how do you get that? Well, because it's  
18 presumed starting out that that first question should be  
19 answered no. We understand from our conversation that a  
20 no answer to that first question means a life sentence  
21 is going to be imposed, because a no answer to the first  
22 question is different than yes and no. And that's what  
23 it takes for a death sentence. So, starting out, that  
24 first question gets a no answer unless or until the  
25 State's evidence proves beyond a reasonable doubt that

18

1 would be if the State only had to prove that a defendant  
2 would possibly commit future acts of violence? Because  
3 anything is possible to happen. It's possible that the  
4 eight of you and myself could commit criminal acts of  
5 violence in the future, so we had to put a stronger  
6 burden on it than that. On the other hand, can you see  
7 how grossly unfair it would be to the State to require  
8 them to prove the existence of a certainty that a  
9 defendant would commit future acts of criminal violence?  
10 Because nobody can prove that, so what we simply did was  
11 we split the baby. We took something greater than  
12 possibility, something not as great as certainty, and  
13 required the State to prove beyond a reasonable doubt  
14 the existence of a probability that a defendant on trial  
15 would commit future acts of criminal violence.

16 So if probability means to you something  
17 that is more likely to happen than more likely not to  
18 happen, that's a deal. If it means something else to  
19 you, that's just fine, too. That's your call, as long  
20 as probability means something more than a possibility,  
21 and as long as probability doesn't mean as much as a  
22 certainty. Anybody have any questions about that?  
23 Continuing with the question -- probability that the  
24 defendant would commit criminal acts of violence?

25 In order to obtain a yes answer to this

19

1 question, it is not necessary that the State prove to a  
2 probability that a defendant would commit a specific  
3 crime in the future. The State, in order to get a yes  
4 answer to this question, is not required to prove  
5 existence of a probability that a defendant on trial  
6 would commit future capital murders. Certainly if that  
7 proof exists, they're entitled to present it to the  
8 jury.

9 But in order to get a yes answer to this  
10 question, the State is not required to prove a specific  
11 crime. The State is required to prove the existence of  
12 a probability that a defendant on trial would commit a  
13 certain class of crimes, category of crimes, and that  
14 category of crime is the one that's a criminal act of  
15 violence. And because the question doesn't limit it,  
16 the criminal acts of violence can be either as to  
17 persons or as to property. Certainly capital murders  
18 are criminal acts of violence as to persons, as are  
19 murders, as are assaults, as are rapes, as are  
20 robberies, as are kidnappings. All criminal acts of  
21 violence as to people.

22 Criminal acts of violence as to property.  
23 Arson is the burning of somebody's vehicle, home, and  
24 certain kinds of burglaries that require break-ins to  
25 get into a building or to break into an automobile, the

20

1 taking of a brick bat, so to speak, and beating in the  
2 windshield of an automobile. All those are criminal  
3 acts of violence. There's probably a hundred other  
4 examples, but it is that type of conduct generally that  
5 the State is required to prove the future probability  
6 that a defendant would commit a particular crime within  
7 that category. And the criminal acts of violence must  
8 be such, according to the first question, that  
9 constitute a continuing threat to society.

10 Now the word society is not going to be  
11 defined for you. I would, however, ask you to consider  
12 making the distinction if you feel comfortable with the  
13 distinction. The word society and community. We all  
14 live in different communities, but all our communities  
15 are a piece of society. I say that for this reason,  
16 most of the time when we think of society, we think of  
17 people that we come into contact with; family members,  
18 people we work with, people in the neighborhood, people  
19 we come in contact with. We don't often think of those  
20 specific individuals that we never have any association  
21 with.

22 For example, we don't think of people  
23 ordinarily, when we think of society, that are behind  
24 the walls of the penitentiary; but those people can also  
25 be a piece of society. For example, if we had a lady

21

1 who was a schoolteacher behind the penitentiary walls,  
2 goes in and punches in at 8:00 o'clock in the morning to  
3 go behind the walls with inmates to do her job, she does  
4 not lose her right to be free from criminal acts of  
5 violence while she's back there doing her job. And then  
6 if at the end of the workday she escapes with her life,  
7 gets her card punched, and gets to leave the walls of  
8 the penitentiary, she does not forfeit her right to be  
9 free from criminal acts of violence once she gets back  
10 in the outside world. That's preposterous. That's not  
11 the case.

12 The point being, behind the walls of the  
13 penitentiary, medical personnel, doctors, nurses, prison  
14 guards, administrators, wardens, school teachers, all  
15 the folks who there are, as well as all the inmates, all  
16 have the right to be free from criminal acts of  
17 violence. And we know inmates do, also; because if we  
18 hope that one of the aspects of the punishment would be  
19 to rehabilitate, there's never going to be any hope of  
20 rehabilitation if you don't make an effort to keep the  
21 inmates safe from each other.

22 So when we talked about criminal acts of  
23 violence constituting a continuing threat to society,  
24 we're talking about all the people, all the time,  
25 everywhere. Because if we were not talking about that,

22

1 and if we were talking about a community, then this  
2 question would read: Do the criminal acts of violence  
3 constitute a continuing threat to the citizens of Harris  
4 County. And the question does not say that. It says a  
5 continuing threat to society. Is there any questions  
6 about the first question?

7 If you answer that question no, then the  
8 whole case is over because a life sentence is going to  
9 be imposed. Because a no answer to the first question  
10 is different than yes and no, and that's what it takes  
11 to get a death sentence. And there is no answer you can  
12 give to the second question after a no answer to the  
13 first question that's ever going to make the death  
14 penalty a possibility in this case ever again. Anybody  
15 have any questions?

16 Let's go to the second question. Before  
17 we take up the second question, specifically, let's talk  
18 about where, in a jury's job, you necessarily would be  
19 before you take up that question. Necessarily, the jury  
20 would have had to have unanimously found the defendant  
21 to be guilty of capital murder; because if you hadn't,  
22 we'd never have these questions. Necessarily, a jury  
23 would have had to have found yes, unanimously, to  
24 Question Number One; because if you had found no, we'd  
25 never get to Question Number Two.

23

1 So what we're saying is that when a jury  
2 gets to Question Number Two, they would have  
3 unanimously, necessarily, consistently voted in such a  
4 way that the death penalty is going to be imposed.  
5 Second question exists for the purposes of making the  
6 jury satisfied that based upon the evidence in that  
7 case, the death sentence is what they want. Or the  
8 second question is there for the purposes of, if there  
9 is something that exists in the case that makes the jury  
10 believe that a life sentence would be more appropriate  
11 than the death sentence, then this is their chance to  
12 substitute that decision. So, the second question  
13 exists as a safety valve for the jury's comfort. That's  
14 it.

15 Let's get into the second question. We  
16 talked awhile ago about the first half of the second  
17 question, and it's absolutely nothing more than an  
18 instruction to the jury to go over all the evidence in  
19 the case. That's all the first half of the second  
20 question said. Go back over all the evidence in the  
21 case for the purposes of asking yourselves this  
22 question. And these are going to be my words. They  
23 aren't the words in the question, but I believe that's  
24 what it asks. For the purpose of asking yourself this  
25 question: Is there a good enough reason why we ought to

25

1 mitigating circumstance. And the law makes that  
2 presumption, because the law doesn't obligate either  
3 side to put that evidence in the case.

4 The only obligation that exists out of the  
5 second question is for the jury to go back over all the  
6 evidence in the case to see if there is any mitigating  
7 evidence in there. If there is, is that mitigating  
8 evidence sufficient in your mind, compared with all the  
9 bad information in the case, to make you believe that it  
10 overcomes that bad information and makes you think that  
11 a life sentence would be more appropriate than a death  
12 sentence?

13 Now, the word mitigating is not going to  
14 be defined for you, because what might be mitigating to  
15 one of you may very well not be mitigating to the other.  
16 When we use the word mitigating, we're not talking about  
17 is there something that excuses some kind of conduct or  
18 that justifies some kind of conduct; because the conduct  
19 is never going to be excused. It's never going to be  
20 justified, because you wouldn't have found him guilty of  
21 having committed the crime. When we're using the word  
22 mitigating, we're simply talking about this question.  
23 Is there something, some unique feature within the case,  
24 that makes you think that the death sentence should be  
25 reduced to a life sentence?

24

1 pull down this death sentence that right now exists and  
2 replace it with a life sentence? If you answer that  
3 question yes, there is, then you're answering that whole  
4 question yes. If your answer to that question is no,  
5 there is not a good enough reason, then your answer to  
6 that whole question is no.

7 Now let's talk about the second question.  
8 The first thing we can see in the second question is  
9 nowhere in that question do we see the phrase, Do you  
10 find from the evidence beyond a reasonable doubt? That  
11 phrase does not exist in that question, and that means  
12 the State is not required to prove to you what the  
13 answer to that question should be. We know from our  
14 conversation the other day that the defendant never has  
15 to prove anything, so the defendant doesn't have to  
16 prove to you what the answer to that second question  
17 should be.

18 Well, now where does that leave us?  
19 Well, it leaves us in this posture. If the State  
20 doesn't have to prove to you what the answer to that  
21 question should be and they don't, and if the defense  
22 doesn't have to prove to you what the answer to that  
23 question should be and they don't, that means the law  
24 presumes there are going to be a number of cases where  
25 there is no evidence whatsoever in a case as to a

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1 In some cases, sometimes some people might  
2 tend to think if the defendant on trial, let's say a  
3 seventeen-year-old person, maybe comparative  
4 youthfulness might be mitigating to some jurors, the  
5 idea being the defendant's mind is not mature enough to  
6 make judgment -- sound and logical judgments.

7 Other people might take that exact same  
8 piece of evidence and view it from a different  
9 perspective and say, well, wait just a second. If you  
10 have a seventeen-year-old who goes off and commits a  
11 crime as horrible as capital murder to begin with and  
12 they're only seventeen, then we've lost them anyway.  
13 Two people looking at exactly the same circumstances,  
14 but viewing it from a different perspective.

15 In some cases you might have testimony  
16 about there being a history or evidence, I should say,  
17 of mental retardation as to a defendant. Some people on  
18 the jury might say that would be mitigating. Other  
19 people might say, well, no, it's not mitigating; because  
20 there is no way you can cure mental retardation. It is  
21 the same as it's going to be for the rest of that  
22 person's life. Other people on the jury might have a  
23 third thought and they might say, well, wouldn't it make  
24 a difference as to how bad the retardation was? Was it  
25 minimum? Was it severe? The more severe, the more

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1 likely it might be sufficient mitigation to make you  
2 think a life sentence is more appropriate than a death  
3 sentence.

4 The point is, it's your call. The only  
5 requirement, again, is that you go back over all of the  
6 evidence in the case. And it may not be anything in a  
7 case that has to do with age or retardation. It could  
8 be something entirely different. You may have in one  
9 case testimony about the week before the crime occurred  
10 for which you had found a defendant guilty of capital  
11 murder.

12 There may be testimony at the second phase  
13 of the trial that shows that a defendant was driving  
14 down the street in a residential area in his vehicle,  
15 saw an apartment house on fire, or a house on fire. At  
16 the risk of his own life, ran into the house, saved the  
17 life of two kids that surely would have died but for his  
18 efforts. Maybe you would think that conduct is  
19 indicative of a character that's not worth executing,  
20 that deserves consideration for a life sentence. Maybe  
21 you ultimately would not. That's your call, and that's  
22 why this question exists.

23 You might have testimony about somebody  
24 who had been in the service, been in Vietnam, been in  
25 Desert Storm. Perfectly good person before they went

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1 into the service and got themselves all screwed up  
2 because of being in combat and never have recovered from  
3 it. You might think, and there is some circumstances,  
4 that that would be a mitigating circumstance that would  
5 be worthy of your consideration of giving that guy a  
6 life sentence. Maybe ultimately that wouldn't be your  
7 decision, but somewhere you have the chance to explore  
8 those sentencing options.

9 Again, the second question exists for the  
10 purposes of committing the jury that they will go back  
11 over all of the evidence in the case. You go back over  
12 the evidence to see, is there a reason why we ought to  
13 undo this death sentence, which heretofore you would  
14 have done by finding him guilty of capital murder in  
15 answer to the first question, and replacing it with  
16 life, if there is a reason in the case to do that?

17 Your next decision is: Is it a sufficient  
18 reason? Is it a reason that we think is worthy of  
19 withdrawing the death sentence and replacing it with a  
20 life sentence? Does anybody have any questions at all  
21 about the first question or the second question? Okay.  
22 The point being that a life sentence for a person having  
23 been found guilty of capital murder before the trial  
24 begins is every bit an equal option as a death sentence  
25 is for a person charged with capital murder before the

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1 trial ever begins.

2 So, what I'm saying is this, and this  
3 would be my thought if I was in the chair of one of you  
4 eight folks: I might say to myself, well, you know, I  
5 got this right. What we're saying is this: If I find  
6 somebody guilty of capital murder and then we come  
7 back -- we, the jury -- and we hear testimony, and the  
8 testimony is such that it makes me believe that the  
9 answer to that first question should be yes, that means  
10 I found somebody guilty of having committed a capital  
11 murder. And not only that, but I also find there is a  
12 probability that they're going to be a future danger.

13 If you answer those two questions in such  
14 a way that they're guilty and they're a future danger,  
15 are you telling me that there is still a possibility  
16 that the defendant could receive a life sentence? And  
17 the answer to that question is, yes, there is a  
18 possibility. The possibility would be if you believe in  
19 the case there is some feature, something we've talked  
20 about, something entirely different that we haven't  
21 talked about. Good enough reason to undo the death  
22 sentence and replace it with a life sentence.

23 It's kind of like the old Yogi Berra  
24 saying; it ain't over till it's over. And just because  
25 you've answered the first two questions in such a way

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1 that the death penalty is going to be imposed, it's not  
2 going to be imposed until you have concluded your  
3 research over the evidence in the case and answer the  
4 third question yes.

5 Each of these questions, each of the three  
6 decisions that the jury makes in a case, guilty of  
7 capital murder or not guilty, yes or no to question one,  
8 yes or no to question two, three decisions -- each of  
9 the three decisions a jury makes in a case are  
10 independent of the other two. Just because you have  
11 found somebody guilty of capital murder, for that reason  
12 and that reason only, does not dictate how these  
13 questions should be answered. Because can you see that  
14 the question of, is he guilty, the question of, is he a  
15 future danger, and the question of, is there a good  
16 enough reason why he ought to get life, are all  
17 absolutely different questions, completely different  
18 questions. It's like asking somebody, how old are you?  
19 What size shoes do you wear? And do you have any  
20 brothers and sisters? They are completely different  
21 questions.

22 Now if we talk -- if you thought in the  
23 concept about those three decisions that the jury makes  
24 being points to a triangle, and inside the triangle is  
25 all the evidence in the case that you're going to use to



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1 answer those three questions, that's about what we've  
2 got. Because when you answer one question, you move  
3 along to the next point in the triangle. And it asks  
4 you something completely different than the last  
5 question did, but you go to that same body of evidence  
6 for the purposes of getting your answer. You make that  
7 second decision. You go to the third question. That  
8 asks you again something different, but you go back to  
9 the same body of information to get the answer to that  
10 third question.

11 So what I'm saying is, each decision that  
12 you make is independent of the next decision you're  
13 called upon to make. And because you have answered one  
14 question one way, because you have come up with one  
15 verdict, does not have anything to do, in and of itself,  
16 how you should answer the next question. Instead, you  
17 go back to the pool of evidence that exists and answer  
18 the question based upon whatever evidence is there in  
19 that pool.

20 So what I'm saying is that starting off,  
21 before the trial ever begins, a not guilty and a guilty  
22 are both equal options. What influences you, leads you  
23 to whatever verdict you reach, has got to be the  
24 evidence in the case. If you find somebody guilty of  
25 capital murder, a no answer to that first question is

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1 what's presumed to be the right answer, unless or until  
2 the State's evidence shows you that the answer to that  
3 first question should be yes. Then, even if you do  
4 answer it yes, that does not mean there is going to be a  
5 death sentence in the case; because you're going to have  
6 to look over the evidence in the case again to see, is  
7 there a sufficient reason why we ought to withdraw this  
8 death sentence and replace it with a life sentence?

9 So can everybody see how each phase is  
10 different? That's why nothing is automatic. I mean, if  
11 you find somebody guilty of capital murder and they --  
12 the questions ought to be answered in such a way the  
13 death sentence is going to be imposed, why in the world  
14 would we ask the questions? It would be no reason to.  
15 The questions exist for the purposes of giving the jury  
16 a second independent verdict you might come up with  
17 based upon the evidence in the case. Those are the  
18 questions and the results those questions can bring.  
19 Does anybody have any questions about the questions?

20 Okay. We have talked about the possible  
21 punishments; that being life and death. I want to spend  
22 a couple of minutes talking to you about what a life  
23 sentence means. No reason to talk about what a death  
24 sentence means. We can all pretty well figure that out.  
25 But sometimes we have different thoughts about a life

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1 sentence; and sometimes people come in with an idea  
2 about a life sentence might mean this, when they're  
3 wrong. But at any rate, I'm going to tell you exactly  
4 what a life sentence means for the purposes of this  
5 case.

6 In this case, if this defendant is found  
7 guilty of capital murder, and if these questions are  
8 answered in such a way that I'm obligated to sentence  
9 this defendant to life, I'll tell you in the Court's  
10 charge and I'll tell you now that this defendant cannot  
11 be considered for parole until he has actually served  
12 forty years of his sentence, forty years, hour for hour,  
13 day for day, week for week, month for month, year for  
14 year. Forty years means the Year 2039. When the Year  
15 2039 comes around, and if the defendant had received a  
16 life sentence, that means that the defendant then  
17 becomes eligible for parole consideration.

18 Parole consideration eligibility has  
19 absolutely nothing to do with whether parole will be or  
20 will not be granted. Being eligible for parole means at  
21 that point that there will be evaluations made by prison  
22 authorities. How was the defendant during his  
23 forty-year stay here? Those evaluations will be sent  
24 to the Board of Pardons and Paroles, who will make  
25 recommendations maybe on those evaluations sent by the

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1 prison. Maybe they'll reject those evaluations. We  
2 don't know. But they will make recommendations, the  
3 Board of Pardons and Paroles, to the governor of the  
4 State of Texas. And I haven't the foggiest who the  
5 governor of the State of Texas is going to be in the  
6 Year 2039. The governor may reject them, and maybe it's  
7 absolutely nothing but a political decision about  
8 whether to parole or refuse to parole somebody.

9 The point of it is this: These two  
10 questions deserve to be answered on the basis of the  
11 evidence that exists in the case when the case is tried  
12 in the Year 1999. They are not to be answered,  
13 speculating what decision will be made about a person's  
14 parole forty years from now. It is perfectly possible  
15 that one of the persons having been sentenced to life  
16 for capital murder may very well, after forty years, may  
17 spend the rest of their natural life, breathing every  
18 single life breath they ever breathe in the  
19 penitentiary, and never be paroled. That's perfectly  
20 possible.

21 It's also perfectly possible that  
22 somebody, at the conclusion of the fortieth year, may be  
23 awarded parole. We just don't know what's going to  
24 happen. But I did not want you to think that -- or have  
25 somebody say, well, I've heard of people that got a life

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1 sentence before, and they were out in five years. So  
2 what I'm going to do is always answer these questions in  
3 such a way that the death sentence is imposed, because I  
4 don't want somebody out of the penitentiary in five  
5 years. What I'm telling you is that's not possible.  
6 It's not going to happen. And a life sentence means a  
7 minimum of forty years in the penitentiary from right  
8 now. Does anybody have any questions about that?

9 Okay. We have talked about the defendant  
10 being charged with the offense of capital murder.  
11 Capital murder means the intentional taking of a life of  
12 some human being without there being any legal  
13 justification and without there being any legal excuse,  
14 and that it was done during the commission of some other  
15 major felony.

16 In this case one of the allegations is  
17 that it was done during the course of kidnapping. One  
18 allegation is that it was during the course of another  
19 intentional murder; murder during a murder, murder  
20 during a kidnapping. If that's proved beyond a  
21 reasonable doubt, that's a capital murder. Now we talk  
22 about it always requires the intentional taking of the  
23 life of another human being without any legal  
24 justification, without any legal excuse.

25 When we talk about intentional, we know

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1 that we want results to be caused and we sought out how  
2 to cause that result. We talked about no legal  
3 justification, no legal excuse. That means we're not  
4 talking about self-defense. Self-defense is not murder.  
5 Self-defense is not a crime. Self-defense is a legal  
6 justification for taking somebody else's life. The  
7 self-defense being they were unlawfully attacking you,  
8 your life.

9 When we talk about intentional murder,  
10 we're not talking about an accident. If you didn't  
11 intend to do something, you're not doing it  
12 intentionally. So we're not talking about those things  
13 when we're talking about murder. But anytime the  
14 State's required to prove an intentional murder during  
15 the course of another felony, they have to prove both of  
16 them beyond a reasonable doubt in order to obtain a  
17 conviction for capital murder. And anytime the State's  
18 required to prove two things, there are three possible  
19 results that could come of that.

20 Possible outcome number one is: They are  
21 able to prove beyond a reasonable doubt the existence of  
22 both of those murders and the other felony; and in that  
23 case, the jury's obligation is to find the defendant  
24 guilty of capital murder. Possible outcome number two:  
25 They cannot prove beyond a reasonable doubt the

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1 existence of either the intentional murder or the other  
2 felony. And if that's the case, the jury's obligation  
3 is to find the defendant not guilty. Possible outcome  
4 number three: Maybe they can prove beyond a reasonable  
5 doubt the existence of the intentional murder, but they  
6 cannot prove that it occurred during the course of  
7 kidnapping.

8 If that were to be the case, the law says  
9 I'd have to give you a third option. Guilty of capital  
10 murder would be one of the options you'd have. Not  
11 guilty would be another option. The third option would  
12 be guilty of murder. Not guilty of capital murder, the  
13 intentional murder during a kidnapping, but guilty of  
14 the intentional murder. It is a lesser crime. The  
15 murder is a lesser crime carved out of the greater  
16 crime, the greater crime being the capital murder.

17 Intentional murder in another felony.  
18 Intentional murder only is a lesser crime of murder. We  
19 know the punishment for capital murder is life or death.  
20 The range of punishment for murder is simply remarkably  
21 different. If a person in the State of Texas is  
22 convicted of murder, they can be punished by confinement  
23 in the penitentiary for life, or for any number of years  
24 not less than five, or not more than ninety-nine. In  
25 addition, the jury can fine a defendant not more than

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1 \$10,000.

2 The point being, most of the time when we  
3 think of a murder, we're thinking about some specific  
4 thing, a specific way that a crime was committed,  
5 perhaps by a specific kind of person. And we know  
6 they're all different. If we're going to ask you to  
7 make a decision on the basis of how you evaluate a crime  
8 and how you evaluate the person who committed it, we've  
9 got to give you room to roam up and down the range of  
10 punishment for the purpose of plugging the specific case  
11 in where you think it's appropriate.

12 For example, you might have, as we talked  
13 earlier, on the one hand, a seventeen-year-old girl  
14 who's never done anything wrong in her whole life, you  
15 may tend to treat her differently than a person who is a  
16 forty-five-year-old, six-time ex-convict, who's made his  
17 living as a career criminal. Even though both of them  
18 committed exactly the same crime, maybe because of the  
19 way they are, you might want to treat them differently.  
20 I don't know. Maybe you would want to treat them  
21 exactly the same. That would be your call. But can you  
22 see if you wanted to treat them differently, we've got  
23 to give you the room to be able to treat them  
24 differently?

25 You might have all sorts of different

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1 kinds of victims in a case. You might have, for  
2 example, a seventy-five-year-old couple, been married  
3 fifty years. They love each other dearly. The Mrs. is  
4 in a hospital. She's on a life support system. She's  
5 going to die. Everybody knows it. She does not want to  
6 go through the misery or suffering. She does not want  
7 to go through the indignity of the being kept alive by a  
8 machine. She talks to her husband, who spends hours  
9 with her every day and loves her dearly. She asks him,  
10 please put me out of this misery. He prays about it.  
11 He thinks about it. And finally, one day, he just gets  
12 up -- she's asleep -- walks over to the wall, pulls out  
13 the plug, and she dies.

14 Without getting into the morality of that,  
15 in this state that's murder. That is the intentional  
16 taking of the life of another human being without there  
17 being any legal justification and without there being  
18 any legal excuse. Now you can also see that that murder  
19 was not done out of hate, not done out of anger, not  
20 done out of revenge. It was done out of love, not  
21 wanting his wife to suffer. Maybe you would think that  
22 seventy-five-year-old gentleman, under those  
23 circumstances, should receive a life sentence. On the  
24 other hand, maybe you think he shouldn't. But can you  
25 see if you didn't think he should, we've got to give

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1 you the room to go up and down the range of punishment  
2 and come up with what you think is the right punishment,  
3 taking into account all the features in the case? The  
4 features being the defendant; the features being the  
5 offense; the features being the witnesses; the features  
6 being the victim.

7 So, my question to you is this: Assume  
8 with me for just a second that you're a juror in some  
9 imaginary capital murder case. Your jury hears all the  
10 evidence about the crime. Your jury goes out and  
11 deliberates. And your jury unanimously determines that  
12 the defendant on trial is not guilty of capital murder.  
13 But your jury unanimously determines that the defendant  
14 on trial is, in fact, guilty of murder. Your jury comes  
15 back, and your jury hears evidence at the second phase  
16 of the trial regarding the character and the background  
17 and so forth of the defendant on trial. And whatever  
18 that evidence is doesn't make any difference. But your  
19 jury goes on out, and you deliberate about what  
20 punishment you're going to impose.

21 My question to you is this: Under those  
22 circumstances, is there anybody here who could not  
23 consider assessing that imaginary defendant's punishment  
24 at confinement in the penitentiary for life if you  
25 thought, based upon whatever the circumstances were of

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1 that case, that that was the right result to reach?  
2 I'm not asking you would you sentence him to life. I'm  
3 asking you if you thought the right circumstances  
4 existed, would a life sentence be a legitimate  
5 sentencing option to you? Nobody's indicated anything  
6 to the contrary, so I'm going to assume it would.

7 And I'm going to take exactly that same  
8 question, and I'm going to flip it over. You're a  
9 juror. You found the defendant not guilty of capital  
10 murder, but you found him guilty of murder. You come  
11 back and you hear evidence at the second phase of the  
12 trial regarding the character and background of the  
13 defendant on trial, whoever he or she was. Doesn't make  
14 any difference what that evidence was; but you go out  
15 and you evaluate the question, decide what punishment  
16 should we impose? Is there anybody here who, if after  
17 having heard all that evidence, whatever it was in that  
18 imaginary case, could not consider assessing that  
19 imaginary defendant's punishment at confinement in the  
20 penitentiary for five years if you thought, based upon  
21 that evidence, whatever it was, that that was the right  
22 result to reach. Again, not would you give them five  
23 years, but would five years be a legitimate sentencing  
24 option to you if you thought the circumstances in the  
25 case helped you? And I gather that you would.

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1 The whole point of all of that is really  
2 very simple. Wouldn't it be offensive if we asked you  
3 to give your time and come down here, sit as a juror,  
4 and dictate to you what the value was for every dead  
5 body that turned up? We don't. We want to give you  
6 the opportunity to come up with what you think the  
7 appropriate punishment should be, taking into account  
8 the circumstances of the case, the witnesses who  
9 testified, the crime in the case, and the defendant, all  
10 the information you've got, and plug it into where in  
11 this range of punishment you think is appropriate. Five  
12 years minimum, life at the maximum, or anything in  
13 between. Anybody have any questions about that?

14 Two last areas real quick. First off, I'm  
15 not going to go into the legalese about this. I'm going  
16 to try and communicate a concept. We have a concept in  
17 our law that says if you have two or more people who get  
18 together, coconspire to commit a crime, and if they do,  
19 in fact, commit that crime, one of those coconspirators  
20 cannot be convicted solely, exclusively, and only on the  
21 testimony of another coconspirator and with no other  
22 evidence other than that. Meaning, that if there is no  
23 evidence other than the testimony of the coconspirator,  
24 a conviction cannot be had unless there is some other  
25 evidence from some other independent source -- that is

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1 to say, something or someone other than the  
2 coconspirator -- that tends to connect the defendant on  
3 trial to the commission of the crime.

4 Now that other evidence does not have to  
5 be, in its own right, sufficient to prove a person's  
6 guilt beyond a reasonable doubt. It only has to tend to  
7 connect the defendant on trial to the commission of the  
8 crime. For example, I'm a driver in a getaway car. The  
9 other guy and I agree to rob a bank. I drive. That's  
10 my job. The guy jumps out, robs the bank, does his job.  
11 Well, the people in the bank saw him. They didn't see  
12 me. He gets arrested. He says, Wait just a second. I  
13 didn't do this by myself. The other one did it, too.  
14 Me. I can't be convicted only on his testimony unless  
15 there is some other evidence that corroborates his  
16 testimony, that tends to connect me to the commission of  
17 the crime.

18 Now that other evidence could be another  
19 person. It could be something else. For example, what  
20 if they arrested him with that bag that was taken during  
21 the course of a robbery, and on that bank bag there was  
22 my fingerprint? That would be other evidence from an  
23 independent source that tends to connect me to the  
24 commission of the crime.

25 So I just use -- so, I don't know if this

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1 is going to come into play in this case or not, but my  
2 question to you is this: Is there anybody here to whom  
3 that truly you find objectionable and to the degree you  
4 wouldn't follow it if it were to come into play in this  
5 case? And I don't have any idea whether it will. Okay.  
6 I'll take it that you can.

7 One last area. There are two kinds of  
8 evidence that can exist during the course of a trial.  
9 The first kind is direct evidence. The second kind is  
10 circumstantial evidence. Direct evidence means somebody  
11 saw something happen. Circumstantial evidence means  
12 that nobody saw something happen; but they're testifying  
13 as to a circumstance in a case that, when taken and  
14 interwoven with other circumstances that are testified  
15 to about the case, tend to show the person is guilty of  
16 the offense charged.

17 Now the law doesn't care whether in a case  
18 testimony or evidence is direct. The law doesn't care  
19 whether testimony or evidence in a case is  
20 circumstantial. Just like the law doesn't say you've  
21 got to have "X" number of witnesses before a person is  
22 convicted. We have people all the time that get  
23 convicted on the basis of one witness' testimony when  
24 that witness is believed beyond a reasonable doubt. We  
25 have people all the time who are found not guilty even

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1 though the testimony is based on five people who claim  
2 they did see something, and the reason is because their  
3 testimony was not believed beyond a reasonable doubt.  
4 So the law doesn't care about the number of witnesses.  
5 The law cares that the testimony rises to the level that  
6 it proved a person's guilt beyond a reasonable doubt.  
7 However many witnesses that takes is however many it  
8 takes.

9 Likewise, the law doesn't care if  
10 testimony or evidence in a case is direct or  
11 circumstantial. The law also cares that testimony is  
12 strong enough that shows a person's guilt beyond a  
13 reasonable doubt. We sometimes have a notion -- and I  
14 know I've heard it down here, and perhaps you have, too.  
15 Some people say, well, I never could find somebody  
16 guilty based on circumstantial evidence. And they have  
17 no idea what they're saying; because the single greatest  
18 feature that identifies people, individualizes people is  
19 a fingerprint. But a fingerprint is circumstantial  
20 evidence; because there is no way to tell when a  
21 fingerprint was placed on an object, and there is no way  
22 to tell where that object was when that fingerprint was  
23 placed on it.

24 Now if it's an immoveable object,  
25 obviously you know where it's been; but you don't know

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1 when the print was put there. The point being, it's not  
2 whether it's direct evidence or circumstantial. The  
3 question is, does the evidence prove a person's guilt  
4 beyond a reasonable doubt? You might have down here  
5 where they're building Enron Field, somebody shoots  
6 somebody else with a gun just right there. And there  
7 are three drunks laying down there, and they're about to  
8 pass out, and they're drunker than Cooter Brown. And  
9 they come up here and testify about what they saw, and  
10 they claim the defendant was the one that did it. And  
11 they also claimed they were drunk as they could be, and  
12 also testified that they were getting ready to pass out  
13 and did, in fact, pass out. Can you see that if the  
14 jury hears testimony from those three people how it  
15 might be difficult to find that imaginary defendant  
16 guilty of murder? Because the evidence doesn't  
17 establish to the jury beyond a reasonable doubt that the  
18 defendant was the one that did it because of the  
19 intoxication of the witnesses. On the other hand --  
20 even though they saw it.

21 On the other hand, you might have three  
22 people, nobody who sees the murder. One guy sees the  
23 defendant with a handgun in his hands fifteen seconds  
24 before the shot is fired but doesn't see the shot fired.  
25 Another guy doesn't see the shot fired, but after the

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1 shot is fired sees the defendant (sic) laying on the  
2 ground with the defendant and a gun in his hand. A  
3 third person, thirty seconds after the shot is fired, he  
4 doesn't see the shot fired. But thirty seconds later he  
5 sees the defendant walking away with a gun in his hands,  
6 calls the police. The police come arrest the defendant.  
7 Defendant's got the gun on him, and the gun has gone on  
8 and ballistically shown to be the one that went in the  
9 body, causing the person to die. Can you see every  
10 single aspect of that testimony is circumstantial? That  
11 might be more reliable than those three drunks, and a  
12 jury might very well have an easier time deciding a  
13 person's guilt beyond a reasonable doubt in the second  
14 example than they would in the first. The point being,  
15 direct, circumstantial, makes no difference. The  
16 question is: Does it rise to the level of proving that  
17 person's guilt beyond a reasonable doubt?

18 Now my question is this: If you were a  
19 juror in a case, and after having heard all the evidence  
20 in the case, and the evidence was exclusive only to  
21 circumstantial, is there anybody here who would refuse  
22 to find that imaginary defendant guilty simply and only  
23 because the evidence was circumstantial, even though  
24 you've -- you believe that evidence beyond a reasonable  
25 doubt? I gather then that nobody would.

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1 All right. We've just finished our first  
2 year in law school. What questions do you have for me?  
3 The whole idea, I think, of this exercise is to give you  
4 an idea about what rules, what things can occur during  
5 the course of a trial just simply to eliminate the  
6 surprises and for you to be satisfied with yourself that  
7 if you did become a juror in the case and if these rules  
8 did come into play -- and we wouldn't know that till we  
9 hear the testimony, because the testimony is what's  
10 going to cause the law to apply or not. But if these  
11 rules did come into play, as a juror, would you be  
12 willing to both follow and to enforce these rules? Is  
13 there anybody here who has heard anything that rises to  
14 the level that would cause us to refuse to support any  
15 of these rules if they did come into play? I gather  
16 that you would.

17 The next thing is we want you to be  
18 satisfied with yourself, certainly the lawyers to be  
19 satisfied, that if you did become a juror in the case,  
20 you would be willing to sit in any one of those chairs,  
21 listen to every single piece of information that's  
22 presented to you, evaluate it however you see fit, and  
23 make whatever decision you make based upon where you  
24 thought the evidence in the case led you. That is to  
25 say, at the outset I have no idea about what result you

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1 would reach, what result you should reach, but take  
2 every step of the process as it comes.

3 The first question: Is he guilty or not  
4 guilty? If he is guilty, we get to the punishment  
5 phase; and these two questions get answered. Answer  
6 them however you're going to answer them, but answer  
7 them on the basis of the evidence in the case and not  
8 for any other purpose. Anybody here who feels that  
9 doesn't apply to them, or that's not the way they could  
10 do it?

11 Okay. If you would, please retire to the  
12 hallway. We'll call you back in one at a time. We'll  
13 get you out of here as fast as we can.

14 HOUSTON NORMAN HAMILTON,  
15 having been first duly sworn, testified as follows:

16 VOIR DIRE EXAMINATION

17 BY THE COURT:

18 Q. Mr. Hamilton, to begin with, let me ask you to  
19 think back to the things we talked about Monday when the  
20 whole group was together, and add to them the things we  
21 talked about today. And out of everything we have  
22 talked about, do you have any questions at all from me?

23 A. No, sir.

24 Q. Is there anything at this point, Mr. Hamilton,  
25 that we have not yet addressed that you feel as though

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1 we should talk about because it might have some bearing  
2 on your service as a juror in this case?

3 A. No.

4 Q. Is there anything at all, sir, whether it might  
5 be something about your personal life, whether it might  
6 be something about your professional life, whether it  
7 might be something about your health, or anything else  
8 for that matter, that you can think of that would in any  
9 way interfere with your ability to be a juror in this  
10 case during the time frame that we've talked about?

11 A. At this moment, I'm missing an appointment at  
12 the V.A. Hospital. And as far as October the 4th, the  
13 week of October the 4th, I have no problem.

14 Q. We'll take care of whatever comes up then.

15 A. I feel like we're the ones on trial, this jury  
16 panel. We've been down here twice, so I'm not sure --  
17 it didn't used to take this long. I don't know why.

18 Q. You've done this before?

19 A. I've been on panels before.

20 Q. Have you been on a panel for a capital murder  
21 case before?

22 A. No, sir, not, capital murder, no, sir.

23 Q. Well, Mr. Hamilton, we're going to give you a  
24 chance. Why don't you give us one?

25 Mr. McClellan.

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MR. MCCLELLAN: Thank you, Your Honor.

VOIR DIRE EXAMINATION

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3 BY MR. MCCLELLAN:

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Q. Mr. Hamilton, my name is Lyn McClellan. Along with Claire Connors, we represent the State of Texas in this case. I want to go over your questionnaire. I want to go over some of your thoughts and concerns and address some of those issues that you have. As you say, you've been down here twice, and there is a likelihood you'll be down here a third time; and if you're on the jury, maybe a fourth time.

Capital murder jury selection is very special. It sets out in the law how it has to occur. There must be individual voir dire. I assume in your prior jury service you've never been in a situation where you were brought in one at a time like you are now and subjected to questions from both sides; is that right?

A. That's correct.

Q. And this is the way the law is set up that we have to do it, and we're following the law in that respect. I understand it's troublesome and burdensome to a lot of people, but we don't have any control over that. Anything about that that you think would affect your service as a juror, the fact you had to come down

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that you believe in the death penalty as a proper punishment for certain types of crimes; is that right?

A. Yes.

Q. Some people who come, though, into jury service believing in the death penalty as a proper punishment for certain types of crimes -- some go on to tell us, though, that they don't, themselves, believe that they could ever participate in a process -- that is, be on a jury -- where they would be called upon to make decisions -- in other words, to answer these questions -- knowing that in doing so, they could be ordering this Judge to order the execution of the defendant sitting over here on trial. Do you have any doubts about your ability to participate in that process and make that type of decision if that's what the law and the evidence called for?

A. Certainly, I can do that.

Q. All right. Now I want to talk to you about your service as a juror. You've been on panels before. You've never been on a jury before, have you?

A. No, sir.

Q. If you become a juror, you will take an oath, along with the twelve or eleven other jurors, to a true verdict render based on the law and the evidence. Okay. That may sound simple to do, but I would suggest to you

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numerous times.

Some people just say, well, I'm fed up with this deal. Let's go ahead and make a decision and go home. We're looking for people who will give their full attention for however long the trial lasts, because it's very important to our side they do that; it's very important to their side they do that. Are you the type of person that can do that?

A. I'm not volunteering. But if I am pressed into it.

Q. I understand.

A. -- I will do the very best job that I know how to do, because some day I may need another juror to do the same for me.

Q. That's exactly right. And we don't get many volunteers to do this type of job. This will probably be the most important decision you'll make in your life, because you're going to be making a life and death-type decision in regards to an individual who's here in the courtroom.

From reading your questionnaire, I assume -- and you correct me if I'm wrong anywhere along the line when I make these statements about what I think your beliefs are. My reading this questionnaire and being in this business for a while, I read from here

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that the law given to you by the Court might, in some instances, contradict or conflict with what your personal opinion and beliefs are. You would have to then be able to follow the law given to you by the Court and set aside what your personal opinion or belief may be if you became juror. Can you do that?

A. Yeah, I can do that.

Q. All right. The Court will give you the law, and it will be in the form of a charge, and it will set out the elements of the offense that we've alleged. It will tell what -- give definitions of certain aspects of the case. It will define murder, define capital murder, and define reasonable doubt. It will give all kinds of definitions, and that will be the law that you apply in the case to the evidence you hear from the witness stand. And you'll be the judge of the credibility of the witnesses. You'll be able to say, I believe some, I believe none, or I believe all of what any particular witness may say. You're the judge of that. You take that evidence that you believe, and you apply the law the Court gives you, and that's how you arrive at a verdict. Any problem with that aspect of the law?

A. No.

Q. Let me give you an example of what I'm talking about. In your questionnaire we asked a question in

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1 here, and you shared with us your opinion about the  
2 question. It's Question Number 46, on Page 10 on this.  
3 Says would an individual's use or sale of drugs prevent  
4 them from relying on a defense that is available to  
5 other members of society? And you checked, Yes, they  
6 were outside the law when breaking the law, and defense  
7 should not apply. Okay.

8 I will suggest to you that the law given  
9 to you by the Court will be contrary to that. In other  
10 words, if I'm standing on the street corner selling dope  
11 and someone comes up and pulls a gun and says, give me  
12 all your money, you S.O.B., then obviously someone is  
13 putting me in fear of serious bodily injury or death;  
14 and I have a right to defend myself even though I'm a  
15 dope dealer.

16 Let's say I'm a convicted child molester,  
17 and let's say I'm driving down the street. Somebody  
18 pulls up and demands me to get out of the car. They're  
19 going to take my car. I suggest to you even though I'm  
20 a convicted child molester, I'm still entitled to  
21 self-defense. In other words, the law does not say, now  
22 if you find from the evidence -- let's say concerning  
23 the law of self-defense or some other aspect. The law  
24 won't ever say that, well, if you find they're doing  
25 this, it doesn't mean that, or it doesn't apply; or if

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1 you find they're convicted of this, it doesn't apply.  
2 Can you assure me that even though you may personally  
3 believe that a specific defense shouldn't be available  
4 if you're breaking the law, if the law that the Court  
5 gives you says that it's still available, can you still  
6 follow that law and apply it there?

7 A. Well, I'm not going to like it.

8 Q. Yeah, I understand.

9 A. Your first example, I stand by my yes. And  
10 your second example, the man was convicted, that's  
11 something that happened in the past. He is not in the  
12 act of child molesting.

13 Q. I understand. I understand. So that's a yes.  
14 But my question is: Let's say -- I'm trying to pick an  
15 example where you disagree with what the law says. And  
16 the test is, are you going to do what you believe, or  
17 are you going to follow the law given to you by the  
18 Court, which is what your oath as a juror says?

19 A. I must follow the law and do all the bitching I  
20 want.

21 Q. I understand. You know, could be a situation  
22 where we have to prove each and every element of the  
23 offense in a capital murder case. We've got to prove  
24 that on a certain date, in Harris County, Texas, the  
25 defendant intentionally took the life of a certain

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1 person during the course of a kidnapping. We have to  
2 prove each and every one of those elements beyond a  
3 reasonable doubt.

4 For example, though, let's say in a trial  
5 you're a juror on, we fail to prove that it happened in  
6 Harris County, Texas. You know it happened in Harris  
7 County, Texas, because it happened about five blocks  
8 from where you live; but no one testified in the Court  
9 that it happened in Harris County, Texas. You can't  
10 judge their case on what you've heard outside the  
11 courtroom, only on testimony that you heard under oath  
12 from the witness stand. And thus, you would have to  
13 follow the law. You would have to find someone not  
14 guilty, who you otherwise believed to be guilty, if you  
15 follow the law that says we have to prove each and every  
16 element beyond a reasonable doubt. I don't expect you  
17 to like it, but we want you to be able to follow it. If  
18 you can't follow that law and do that if that's what  
19 happened to have occurred -- can you do that?

20 A. Yes, sir.

21 Q. All right. And you make good points in the  
22 fact you say you may not like it, or did you say do your  
23 bitching about it later? And it may be my fault that we  
24 didn't prove that up, because it would be easy to prove  
25 up. And you can go across to Johnny Holmes and demand

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1 my resignation, and you'll possibly get it. So I'll be  
2 fired, but you'll probably get that. But in the  
3 courtroom and in that trial, you'd have to follow  
4 whatever the law the Court gave you and whatever the  
5 evidence was from the witness stand. And can you do  
6 that?

7 A. Yes.

8 Q. Okay. A lot of people say that -- now you've  
9 learned a lot. I assume you've learned a lot during the  
10 Judge's voir dire about how a capital murder trial  
11 progresses. A lot of people might think that, you know,  
12 well, when you find someone guilty of capital murder,  
13 that's pretty well the end of the inquiry. That means  
14 he gets death, doesn't it? A lot of people, before they  
15 listened to the Judge's voir dire, never thought about  
16 that.

17 Now, you know finding someone guilty of  
18 capital murder allows you to then go to the punishment  
19 stage of a trial, where you're given questions. And the  
20 answer to those questions tells the Judge what  
21 punishment must be assessed. There is no case, no type  
22 of crime in the State of Texas where someone  
23 automatically receives death as a result of having  
24 committed that crime. Understand that?

25 A. I didn't know that. I understand.



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1 Q. You understand now?

2 A. Yes.

3 Q. So, just because you find someone guilty of  
4 capital murder does not tell you, in and of itself, what  
5 the punishment is going to be. You have to go and look  
6 at the other evidence that you hear at the punishment  
7 stage about a defendant's character, background, criminal  
8 history, or lack thereof, mental abilities or  
9 disabilities, all kinds of information about the  
10 individual himself that is not necessarily relevant to  
11 whether or not he committed the crime, but is entirely  
12 relevant as to what punishment he should receive for the  
13 crime you've already found that he is guilty of.

14 Okay. Keep in mind that the answer to  
15 these questions never goes back and undoes the finding  
16 of guilty. He's still always guilty of capital murder.  
17 And there is only two punishments, life or death. And  
18 you now know that life means forty years, day for day.  
19 So if a person commits a crime and is convicted in 1999,  
20 it will be 2039 before they would ever be eligible for  
21 release, even if they were to receive a life sentence.  
22 And the decision on life or death is going to depend  
23 upon your answer to these questions up here. Again,  
24 just like in guilt/innocence, the burden of proof in  
25 guilt/innocence is on the State. If we fail to prove

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1 our case beyond a reasonable doubt, you find the  
2 defendant not guilty. Any problem with this aspect of  
3 the law?

4 A. No.

5 Q. Now let me just cover a couple of other things  
6 while we're talking about guilt/innocence. The  
7 defendant doesn't have to testify. If he doesn't  
8 testify, you can't consider that as any evidence against  
9 him. Anything wrong with that aspect?

10 A. No.

11 Q. Defendant's presumed to be innocent. If you  
12 had to vote right this very minute as to whether or not  
13 Charles Mamou, Jr. is guilty or not guilty of capital  
14 murder, you would have to vote that he's not guilty  
15 because you've heard no evidence. Anything wrong with  
16 this aspect of the law?

17 A. No.

18 Q. That burden of proof carries on into the  
19 punishment stage of trial, at least to the first issue.  
20 Keep in mind that before you get to that punishment  
21 stage of the trial, you would have to have found someone  
22 guilty of capital murder, heard additional evidence that  
23 might be available by the individual, himself,  
24 character, background, that kind of stuff.

25 Then you're asked to answer these

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1 questions. And in answering those questions, you can  
2 rely upon both bodies of knowledge. You can go back and  
3 consider what you heard at guilt/innocence, and you can  
4 also consider what you heard at punishment. And the  
5 first question is: Do you find from the evidence beyond  
6 a reasonable doubt that there is a probability that the  
7 defendant would commit criminal acts of violence that  
8 would constitute a continuing threat to society? It  
9 doesn't ask you, is it a certainty that he would?  
10 Doesn't ask you, is it a possibility? Anything is  
11 possible. It asks you more than a possibility. It asks  
12 a probability. I suggest to you more likely than not.  
13 Do you see a distinction between probability meaning  
14 more than possibility?

15 A. Yes.

16 Q. That the defendant would commit criminal acts  
17 of violence. Some people say, well, if I have found  
18 someone guilty of capital murder, intentionally taking  
19 the life of another person without any legal  
20 justification -- by that I mean, not self-defense, not  
21 accident. If you intend to kill someone and do so  
22 during the course of a kidnapping, I would always answer  
23 Issue Number One yes, that they're a continuing threat,  
24 at least to a probability, to commit future acts of  
25 violence.

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1 But I suggest to you that there may be  
2 facts and circumstances, and you won't know that answer  
3 until you look at all those facts and circumstances.  
4 Because when you look at the punishment stage of the  
5 trial and hear about a defendant's character and  
6 background, you may hear the person's been a model  
7 citizen all his life. This crime that he committed is  
8 horrible. No doubt about that. He'll be punished for  
9 it. No doubt about that. But it doesn't indicate to  
10 you he'll be a continuing threat to go on and commit  
11 acts of violence again. There may have been some reason  
12 or something that caused him to do it that you may think  
13 will never occur again; and thus, you might think he's  
14 not a continuing threat to commit acts of violence.

15 On the other hand, there may be a person  
16 who's been in and out of trouble all their life and you  
17 think this is a stepping stone along the way. So my  
18 question to you is: On Issue Number One, having found  
19 someone guilty of capital murder -- because you don't  
20 get there unless you do -- are you still open to  
21 answering that question either yes or no, depending upon  
22 what the facts show?

23 A. Yes.

24 Q. Okay. So, again, there is not an automatic  
25 answer. But if there was an automatic answer to Issue



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1 Number One, it would be no, which means he gets a life  
2 sentence; because the burden of proof is on us. And if  
3 we fail to prove beyond a reasonable doubt he's a  
4 continuing threat to commit future acts of violence, you  
5 would have to vote no. Any problem with that?

6 Now the next issue then comes about if you  
7 found -- if you answer Number One yes. If you answer  
8 Number One no, that's the end of the trial; and he gets  
9 a life sentence. But if you answer it yes, you're then  
10 asked to look back through all the evidence and  
11 determine, are there any reason or reasons, what they  
12 call mitigating circumstances, as to why this person  
13 ought to receive life as opposed to death? I don't know  
14 if you find any or not but you're committed to going  
15 back and looking. Okay.

16 So, by that, when I say look back at all  
17 the evidence, let's say you may have heard evidence  
18 during the trial the defendant was high on drugs or  
19 alcohol when he committed the offense. Juror Number 1  
20 over there may say, well, I think that mitigates towards  
21 a life sentence. That's a reason for me to give him  
22 life as opposed to death; because when you're high on  
23 drugs or alcohol, you do things you wouldn't ordinarily  
24 do.

25 Juror Number 2 may say, I don't think

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1 that's right at all. I know people that get high on  
2 drugs or alcohol, and they don't commit capital murder.  
3 Plus, I don't think there is any connection there. And  
4 they find it's not mitigating. That's okay, because  
5 what that question asks you to do is for you to look  
6 back at the evidence, you weigh it in your mind, and you  
7 determine whether or not it's mitigating. And if it is,  
8 is it sufficiently mitigating to change your vote from  
9 death to life? Any problem with this aspect of the  
10 law?

11 A. No.

12 Q. You can look back through all kinds of  
13 situations, the age of a person, mental retardation, all  
14 kinds of information, weigh it in your mind. Does it  
15 mitigate? Does it give me a reason why a person ought  
16 to receive life as opposed to death? If it does, it's  
17 sufficient in your mind, you change your vote to life  
18 and he will receive a life sentence. If it doesn't,  
19 you vote the way it is and answer that question no and  
20 he receives a death penalty.

21 Now some people have come to us and said,  
22 well, now, if I have found someone guilty of capital  
23 murder, and then further on Issue Number One determine  
24 there is a probability he would be a continuing threat  
25 to commit future acts of violence that would be a

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1 continuing threat, isn't that who the death penalty is  
2 designed for? Why in the world would I go out and  
3 answer Issue Number Two that there is some reason to  
4 give him life as opposed to death? And I don't know  
5 what you would do or what you wouldn't do, or evidence  
6 that you may hear or not hear.

7 Question Number Two commits you to  
8 looking, commits you to examining the evidence for that  
9 burden of proof. And are you open to doing that?

10 A. Yes.

11 Q. Okay. Obviously, you won't always find  
12 mitigating every time; or if you did, no one would ever  
13 receive the death penalty. But it commits you to  
14 looking for that evidence. Commits you to examine it.  
15 And if your mind's still open after you found someone  
16 guilty of capital murder, and if you find that he's a  
17 continuing threat to commit future acts of violence, is  
18 your mind still open to examining that evidence and  
19 fairly weighing it in your mind as to what effect that  
20 would be given as to whether or not you ought to change  
21 your vote from death to life?

22 A. Yes, I can do that.

23 Q. All right. Sometimes people say, well, you  
24 know, it's easy to say you'll follow the law; but you  
25 know, you come up with certain opinions and beliefs that

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1 you've grown up with all your life and dump those over  
2 and take control when you get in a situation like this.  
3 And all I need is a commitment from you that you search  
4 yourself and determine whether you can make this  
5 commitment, that you can take an oath to be a juror to a  
6 true verdict render based upon the law and the evidence  
7 and go where the law and the evidence leads you,  
8 understanding that it may lead you to someplace you  
9 might otherwise -- without the law being given to you --  
10 you might have gone another direction. But are you the  
11 type of person that can follow the law and the evidence  
12 even if it leads you to somewhere where you think, I  
13 can't believe I'm doing this, but that's what the law  
14 and the evidence calls for; and thus, I'm going to  
15 follow my oath? Are you the type person that could do  
16 that even though it might conflict with some of your  
17 personal opinions if you were just making your decision  
18 on personal opinion?

19 A. Yes.

20 Q. All right. As you say, you're not volunteering  
21 for the job; but if you're selected, would you be able  
22 to do that job to the best of your ability and be fair  
23 to both sides?

24 A. Yes, sir.

25 Q. Okay. Thank you very much, sir, and I'm going

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1 to pass you to the other side.

2 THE COURT: Thank you.

3 Mr. Hill.

4 VOIR DIRE EXAMINATION

5 BY MR. HILL:

6 Q. Mr. Hamilton, my name is Wayne Hill. Kurt  
7 Wentz and I both represent Mr. Mamou in this case. And  
8 I am, quite frankly, more interested in hearing you  
9 express yourself than propounding a question to you and  
10 saying, will you follow the law, yes or no?

11 At the beginning you seemed to have had  
12 some pretty strong feelings about some things about  
13 being here. And obviously, I think it's in everybody's  
14 best interest to know how strongly you do feel about  
15 things. If you feel so strongly about a particular area  
16 of the law that you don't honestly feel comfortable  
17 sitting in a case like this, or you feel like if you  
18 were sitting in this chair and you were hearing yourself  
19 talk, then maybe this wouldn't be the ideal case for you  
20 to sit on, we need to know that now. Because obviously,  
21 if you're selected, with eleven other people, it's too  
22 late if we find out there is some issues we should have  
23 addressed to you way back here.

24 You feel a sense of resentment being down  
25 here and how many times you've had to come back?

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1 that it would be fair to you, as the defendant on trial,  
2 to have twelve people who have already told you that  
3 they don't think anybody should have guns in the first  
4 place? You can see how that would place an unbearable  
5 burden on those twelve people to really give you a fair  
6 trial over carrying a weapon, because maybe they have a  
7 strong feeling about the issue of gun ownership in the  
8 first place?

9 A. To me, they can have all the feelings they  
10 want. If they're chosen as a juror, they're going to  
11 have to follow the law and the evidence. It's not a  
12 matter of you get to pick what you agree with. I don't  
13 know what you guys are going to come up with.

14 Q. Right.

15 A. But if I have to leave certain things at the  
16 doorstep, I'm fifty-eight years old. I've been around  
17 enough. You're not scaring me, okay.

18 Q. Do you think I'm trying to scare you?

19 A. No. All I'm telling you is I'm not going to do  
20 a yes, yes, yes, sir, just because I'm intimidated. I  
21 feel like that if I am called to set my prejudices  
22 aside, that some of those might be about this: If  
23 you're outside the law, you shouldn't have the  
24 protection of the law.

25 Q. Right.

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1 A. Yes, some, yeah.

2 Q. Okay. And that's fine. I just want you to  
3 express it to us. I don't want you to feel constrained  
4 in having to feel like, you know, when Mr. McClellan was  
5 talking to you -- and if I'm correct, it was my  
6 understanding that you said that if a person was dealing  
7 dope out on the street corner, in that situation, you  
8 don't feel like you could afford the right to  
9 self-defense even if that were an issue in the case.  
10 Did I --

11 A. I think I did say that, yeah.

12 Q. All right. So let me ask you --

13 A. Sounds a little different when you say it,  
14 though.

15 Q. Right. Do you feel like I'm trying to trick  
16 you?

17 A. No.

18 Q. I want you to tell me exactly how you feel,  
19 because -- well, let me put it to you this way: You're  
20 a member of the N.R.A., right? You're a gun owner?

21 A. Yeah.

22 Q. Tell me if you think you would be comfortable  
23 in having a trial -- I'm sitting with you. You're  
24 charged with carrying a weapon. The twelve people  
25 sitting in that box are anti gun people. Do you think

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1 A. If that's not what the law says, then I'm going  
2 to have to set that aside and deal with it in another  
3 way. Yes, if it were me, a gun carrier, probably  
4 antigunners in the jury box, yes, I would feel  
5 uncomfortable. I sure would. But still, it's their  
6 duty to put that aside for the length of that trial.

7 Q. Okay.

8 A. Now if they can swear an oath and they can go  
9 to sleep after making whatever decision they make, then  
10 I need to abide by their decision.

11 Q. And that's the critical inquiry; because you  
12 don't get on the jury unless you can tell the Court, in  
13 all fairness, look, I'm comfortable enough with all of  
14 these issues that you're discussing. Self-defense if  
15 you're a dope dealer. The State forgets to ask somebody  
16 whether it's in Harris County. And you're swearing that  
17 if you're on that jury and that's the kind of  
18 circumstances you're presented with, you'll find a  
19 person not guilty.

20 There is some people that come in here and  
21 say, look, that's asking a little too much of me;  
22 because I certainly have a strong enough feeling that if  
23 those were the facts presented to me, I think it's  
24 ludicrous. I think it's absolutely ridiculous that you  
25 can expect somebody to say, I'm going to find somebody

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1 not guilty simply because it wasn't proven it was in  
2 Harris County. That's why we ask the questions now,  
3 because you're not a juror yet. So if you're  
4 comfortable with your abilities and the strength of your  
5 commitment to being able to make those kinds of findings  
6 despite any strong feelings that you have, that's fine.  
7 If you're not, you feel that is a little too close, just  
8 let us know; because that's all we ask you to do. You  
9 don't have any problem with applying a law of  
10 self-defense to an individual if you felt like they were  
11 breaking the law selling dope, let's say?

12 A. I have a problem, yes, I have a problem with  
13 that. But if I am told, here's the law and here's the  
14 evidence and you're going to have to go by that law, I  
15 don't -- I disagree with a lot of laws, and I disagree  
16 with the way they're applied in a lot of cases, too.

17 Q. Tell me some of the ones you have the biggest  
18 disagreement with.

19 A. One that really sets me on fire is something  
20 along the lines of, we forgot to ask if it happened in  
21 Harris County. Now, that's just ridiculous to me. I'm  
22 kind of stuck on that example, because that really got  
23 my attention.

24 Q. That's the one the prosecutor gave you.

25 A. And I have heard all these things about, they

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1 get life and they're out in three years. I don't know  
2 where that comes from, but that's certainly the  
3 perception of most of us out there on the street.

4 Q. I think that's true. But if you're not down  
5 here on a day-to-day basis, don't see what the law is,  
6 you wouldn't have any reason to know different. I'll be  
7 honest with you. I don't have a problem talking with  
8 you, although some of the questions I ask you, I hope  
9 they don't offend you.

10 I think if you were sitting here with me  
11 and you were reading the questionnaire, you would want  
12 to at least ask some questions. You said you don't have  
13 a very strong opinion or very good feeling about defense  
14 lawyers, in response to one of the questions that was  
15 asked of you here, Number 48(b). That's on Page 11,  
16 sir.

17 A. Surely. I'm very consistent in fairly applying  
18 my opinion of attorneys to both the defense and the  
19 prosecution.

20 Q. It says, What is your opinion about  
21 prosecutors? You said, Okay. And you said of defense  
22 lawyers, very low. So I see that as a distinction.

23 A. I can see a distinction. And I recall that,  
24 from what I hear and my life experience tells me, that  
25 many times defense lawyers will go to outrageous lengths

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1 to call upon technicalities to get their client off.

2 Q. What personal experiences have caused you to  
3 have that opinion?

4 A. I don't know that I can tell you one. I do  
5 know that there are cases, as you suggested while ago,  
6 if you don't prove it's in Harris County. I know what  
7 would -- they come in and they mistyped the man's name.  
8 They mistyped the man's name on the paper. They didn't  
9 get a chance to go fix it. It was just -- I think it  
10 was thrown out.

11 Q. Was that a case that you were a juror on?

12 A. No, I've not been a juror before.

13 Q. Did you read that in the paper?

14 A. No. I was down here when that was going on.  
15 Is that true? I mean, if you make a typographical  
16 error, it just blows the whole case?

17 Q. Maybe.

18 A. I think that's kind of sad. I think many times  
19 maybe we've gone so far in favor of the defendant that  
20 maybe justice is not being served.

21 Q. So how do you feel looking at Mr. Mamou right  
22 now, what he's charged with? Any thoughts come to your  
23 mind about this case and him sitting here?

24 A. No. It's a capital murder case.

25 Q. Right.

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1 A. And quite frankly, son, I look at it all and  
2 say, how in the world could you have gotten yourself  
3 here?

4 Q. Well --

5 A. Breaks my heart.

6 Q. What do you think brought him here?

7 A. He has committed a murder while he was  
8 committing some other crime.

9 Q. Right. And do you --

10 A. Or that's what he's charged with.

11 Q. Right. But you used the words, he committed a  
12 murder while he was committing another crime. Now those  
13 words came easy to your lips. You've got to tell us  
14 now, because it's too late to find out later. Do you  
15 feel like that's probably what occurred, as he's sitting  
16 here? He just didn't get picked up off the streets and  
17 placed in this chair.

18 A. That's true. And my choice of words is  
19 suspect there, but I don't have a problem with it. He's  
20 going to have to prove it. They will have to prove each  
21 and every thing that they want to stick. I don't know.  
22 I'd rather not be a juror, but all I'm telling you is  
23 that I'll just have to do it the way it's supposed to.

24 Q. Why would you rather not be a juror?

25 A. It's an inconvenience to my life. It's a hell

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1 of an imposition on my time. Have you ever tried to get  
2 here at 8:30 from Katy? You got to have to leave by  
3 5:30 in the morning.

4 Q. Yeah, it's tough.

5 A. And if you ever had to try to get an  
6 appointment at the V.A. Hospital and find out today  
7 you're not going to make it, you're going to be another  
8 thirty days before you can get another shot at this man,  
9 okay. But I've never been on a jury. So, you know, it  
10 would be a whole lot better than you calling on me once  
11 every six months to serve, and I suppose that's possible  
12 you could do that.

13 Q. All right. So, let me ask you this: Setting  
14 aside what the law tells you you got to do, because you  
15 know what? The law doesn't tell you you got to do a  
16 darn thing. The law says if you take the oath of a  
17 juror, then you're supposed to follow the law that's  
18 given to you by the Judge. All right. Again, going  
19 back to what your feelings are, because I learn more  
20 about people when they tell me what their feelings are  
21 than when they tell me, I can follow the law. You're  
22 faced with a situation. And I want you to think about  
23 your answer, because Mr. McClellan answered to you in a  
24 certain way (sic).

25 And I want to pose this question to you:

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1 Are you telling us that in a situation where you had  
2 found, based on the evidence beyond a reasonable doubt,  
3 that a person caused the death of two people  
4 intentionally -- in other words, it was their specific  
5 intent to cause the death of these two people, and they  
6 did so -- it was not done in self-defense. It was not  
7 an accident. There was no legal justification that  
8 causes you to return a not guilty verdict; and  
9 therefore, you return a guilty finding.

10 And at that point you're called upon to  
11 answer Question Number One. Can you honestly say that  
12 based upon the evidence that you had used to find that  
13 the person committed two intentional murders, that you  
14 can honestly look at a question like that and ever find  
15 that that answer should be no? If you use just the  
16 evidence which you're allowed to hear during the trial  
17 of the case and you know that a person at counsel table  
18 committed two intentional murders, would it be a fair  
19 statement to say that based upon that very evidence,  
20 somebody causing two intentional deaths, that there  
21 would always be proof beyond a reasonable doubt that  
22 that person was probably going to be a threat to society  
23 in the future?

24 In other words, you're not just asked to  
25 answer that question based on your feelings. You're

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1 asked to answer based on the evidence. And I'm saying,  
2 in a situation where you had found somebody guilty for  
3 killing two people already, wouldn't you agree with me  
4 that that question would always have to be answered yes?

5 A. Yes, I agree. I agree with you. That's my  
6 first reaction to what -- you've just set me up into a  
7 situation. If I'm going to find someone guilty of  
8 capital murder, I'm not sure I know of an example that  
9 would allow me to say no.

10 THE COURT: Mr. Hamilton, can you see that  
11 it's not necessary for you to know of an example? It is,  
12 however, necessary for you to be open to the notion that  
13 an example could exist.

14 VENIREPERSON: Well, now that's -- that, I  
15 have no problem with.

16 Q. (BY MR. HILL) But you said if you find them  
17 guilty of killing two, you would exclude those  
18 possibilities?

19 A. I can't exclude any of these possibilities.  
20 I'm just saying that maybe in that particular situation,  
21 I start from a yes answer and have to be moved to a no  
22 answer.

23 Q. So you would agree with me, then, that you  
24 couldn't presume the answer to Question Number One  
25 should be no? Was that your statement, that you presume

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1 that the answer is going to be yes, unless you're moved  
2 to a no answer?

3 A. I think that's where I get to. I think I do --

4 Q. All right.

5 A. -- if I have already said that they are guilty  
6 of the capital murder.

7 Q. And you understand you don't get to Question  
8 Number One --

9 A. Unless --

10 Q. -- unless you had found somebody guilty of  
11 capital murder?

12 A. Yes, sir.

13 Q. And is that your feeling, and is that your  
14 belief? Me telling you what the law is, Judge, the  
15 prosecutor, anybody telling you what the law is, that's  
16 how you honestly feel?

17 A. That's how I honestly feel.

18 Q. And that's how you would have to look at a case  
19 like that, Special Issue Number Two; because you  
20 understand that before you get there, you've already  
21 found the person guilty beyond a reasonable doubt of  
22 capital murder?

23 A. I can only tell you that I would start from  
24 that one answer and work to the other.

25 Q. And the first answer would be presumed to be

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1 yes unless you were convinced that the answer should be  
2 no to Question Number One?

3 A. Yes, that is correct.

4 MR. HILL: Judge, I'd like to submit him  
5 for cause.

6 VOIR DIRE EXAMINATION

7 BY THE COURT:

8 Q. Mr. Hamilton, let me ask you a couple of  
9 questions. I want to know -- I don't care so much what  
10 your answers are. That's your business. But I do need  
11 to satisfy my own self that I understand the depth of  
12 your commitment. We had talked earlier while we were  
13 sitting there, y'all were sitting in the jury box, about  
14 the fact it's presumed the answer to that first question  
15 should be no; because it starts off with the phrase, do  
16 you find from the evidence beyond a reasonable doubt?  
17 That means the State has to prove that the answer should  
18 be yes. And the question says, is there a probability  
19 that the defendant on trial would, in the future, commit  
20 acts of criminal violence that would rise to the level  
21 of being a continuing threat to society?

22 Can you see, Mr. Hamilton -- and if your  
23 answer is no, I can't see it, that's fair. I understand  
24 that. But can you see that there could be a set of  
25 circumstances wherein two people were killed during the

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1 course of a single criminal transaction that would  
2 warrant a jury finding a defendant guilty of capital  
3 murder. But the uniqueness of that situation as to that  
4 defendant on trial, those two people that he did  
5 intentionally kill, there may be no other two people in  
6 the world that he would kill. He may not commit any act  
7 of criminal violence in the future, and a jury may be  
8 perfectly satisfied over that. Can you see how that  
9 might be a possibility?

10 A. I can see how that might be a possibility.

11 Q. There was, a couple of years ago, a trial in  
12 South Carolina. And I know you keep up with this stuff;  
13 so maybe you're aware of it, where a woman was convicted  
14 of capital murder for running her two children off into  
15 a lake in the backseat of a car and they drowned. You  
16 remember that?

17 A. Uh-huh.

18 Q. And she was convicted of capital murder, got a  
19 life sentence. Maybe the idea there was certainly her  
20 children were in danger, but she had no children left.  
21 She had never done anything wrong in the past. It  
22 wasn't anticipated she'd be a threat to society,  
23 generally, in the future. I don't know if they had  
24 these same questions or not, but I'm going to use that  
25 as an example.

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1 I'll go back to my first question. Would  
2 you, if you found somebody guilty of capital murder,  
3 start off with the presumption that the answer to that  
4 first question should be yes, or would you require the  
5 State to prove it to you all over again that the answer  
6 to the question should be yes? They proved to you the  
7 person is guilty; but that, in and of itself, doesn't  
8 prove they're going to be a continuing threat to  
9 society. It proves they did something in the past.  
10 Doesn't prove what they're going to do in the future at  
11 all, necessarily. And there was a question.

12 A. The question was, could I do it?

13 Q. Yes, sir. And as I say, your answer is your  
14 personal answer; and I'm not trying to influence you one  
15 way or the other, but I do need to know.

16 A. I think I could do it, okay; but here again is  
17 a situation where I maybe disagree with how things go.

18 Q. That's fair.

19 A. But particularly if you get to this point in  
20 the proceedings and it comes down to, we're going to  
21 charge you to answer this Question Number One. Surely,  
22 you're going to tell us again, you know, that, okay,  
23 guys, you're going to have to have it proved. He's got  
24 a default answer. You're going to have to put all that  
25 stuff away. The thing that is most dangerous, in my

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1 opinion, about preconceived notions is that they are  
2 followed and put into effect in many cases without even  
3 realizing that they are preconceived, okay. It just  
4 comes to you as an answer. You have got a situation,  
5 okay. Here's the answer. But if you look at the thing,  
6 then take it apart, maybe that was just a preconceived  
7 answer. If you were stumped, just wait. Just don't  
8 answer. Just go back, you know, here's what you're  
9 going to have to do. Yes, that can be done. It can be  
10 done, but it takes a conscious effort.

11 Q. And you have recognized that and hit the nail  
12 on the head, I think. And would you make that conscious  
13 effort?

14 A. Yes, I can do that.

15 Q. Did the conscious efforts, specifically being  
16 if you found somebody guilty of capital murder, you  
17 would make a conscious effort to follow the law and  
18 require the State to prove that the answer to that first  
19 question should be yes and not assume it should be yes,  
20 simply and only because you found the defendant guilty  
21 of capital murder?

22 A. Yes.

23 Q. Can we make that deal?

24 A. And that Number One issue seems to hone in only  
25 on whether or not you would think the defendant is

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1 likely to commit future problems. So does that mean,  
2 then, that anyone who has a clean record to date can  
3 commit capital murder and get a pass on the death  
4 penalty?

5 Q. What it does mean -- that exact question --  
6 what it does mean is that the jury needs to look at all  
7 the evidence in the case to see if their clean record  
8 alone rises to the level where it's worthy of that, or  
9 are the facts of a given case so bad that the clean  
10 record alone gives way to the facts of the case?

11 A. Yes.

12 Q. But at any rate, am I understanding accurately  
13 that if you found somebody guilty of capital murder,  
14 which is what they did do in the past, that that, in and  
15 of itself, does not necessarily always show you what it  
16 is they're going to do in the future?

17 A. I agree with that, sir.

18 Q. Can you see that the first question, which is  
19 going to be asking you to decide is he guilty, has to do  
20 with having a past? This question has to do with what's  
21 probably going to happen in the future? Okay.

22 All right.

23 MR. HILL: Were you done?

24 THE COURT: Yes.

25 MR. HILL: I just have one question, if I

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1 that you have to follow the law doesn't mean that you're  
2 a hundred percent comfortable with that. And if you do  
3 have what you refer to as preconceived notions, we just  
4 need to know that now.

5 My last question to you is this: Think  
6 for a moment that you've heard all the evidence in the  
7 case. That evidence has convinced you that the person  
8 is guilty of capital murder, however it's alleged. That  
9 evidence also convinces you that person is a future  
10 threat to society. You have just answered Question  
11 Number One in the affirmative; yes, I find beyond a  
12 reasonable doubt that there is a probability that this  
13 person would commit criminal acts of violence that would  
14 constitute a continuing threat to society.

15 Can you honestly tell me that having found  
16 those two answers, that you could then honestly ever  
17 consider answering Special Issue Number Two in a way  
18 that the person would receive a life sentence; or do you  
19 think at that point, in all fairness, anybody that  
20 commits capital murder and is a future threat to  
21 society, it doesn't matter about where the person came  
22 from, what their makeup is, whatever, that person should  
23 get the death penalty? Is that how you feel?

24 A. Quite honestly, yes, I think I would feel that  
25 way.

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1 may.

2 THE COURT: Sure.

3 VOIR DIRE EXAMINATION

4 BY MR. HILL:

5 Q. The Judge used the example of Susan Smith in  
6 South Carolina, the lady that ran her two kids into the  
7 lake to drown. What's your take on that? What were  
8 your feelings about that? Do you think somebody like  
9 that is not going to be a future threat to anybody in  
10 the future just because she killed her two kids? What's  
11 your honest feeling about somebody like Susan Smith,  
12 since that's a real life case that's already been  
13 decided?

14 A. My honest opinion is the nature of what she did  
15 was just so unbearable for me to even think, on this she  
16 should have received the death penalty --

17 Q. Right.

18 A. -- for that one act.

19 Q. Okay. I don't want you to struggle to have to  
20 stay on this jury if that's not where you need to be,  
21 and I do intend to ask you questions that try to get an  
22 absolute commitment about how you're going to feel about  
23 things; but that's all we can judge our decision making  
24 on. How do you really feel? How do you really react?  
25 Somebody telling you what the law is or

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1 Q. It doesn't do enough and --

2 THE COURT: That's fine.

3 Mr. Hamilton, thank you very much. We're  
4 going to excuse you.

5 Mr. Hill, your challenge is granted.

6 JOYCE STONER WILLIAMS,  
7 having been first duly sworn, testified as follows:

8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q. How are you today?

11 A. Fine.

12 Q. Please have a seat and make yourself  
13 comfortable. Ms. Williams, first off let me ask you, do  
14 you remember back to Monday and the things we talked  
15 about when the whole group was together? Add to it this  
16 morning the things we talked about.

17 A. We didn't come Monday, did we?

18 Q. Friday, I'm sorry. But whatever day it was,  
19 the things we talked about that day, add to them this  
20 morning, the things we talked about this morning. Out  
21 of everything that we have talked about so far, do you  
22 have any questions at all for me?

23 A. (Nods negatively.)

24 Q. Is there anything up to now that we have not  
25 addressed that you feel as though we ought to talk about

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1 because it might have some bearing on your service as a  
2 juror?

3 A. No.

4 Q. Anything about any of these rules we've talked  
5 about that you have any disagreement with?

6 A. No.

7 Q. You had indicated in your questionnaire in  
8 response to a question on Page 12, question being Number  
9 56, question asked: Do you have any religious, moral,  
10 or personal beliefs that would prevent you from  
11 returning a verdict which would result in the execution  
12 of another human being? You checked yes. You said, I  
13 don't believe in the death penalty. God is the ultimate  
14 judge of any person. Remember having put that in your  
15 questionnaire?

16 A. Uh-huh.

17 Q. Do you remember our conversation both last  
18 Friday, as well as today, that the death penalty is a  
19 possible punishment if a person is convicted of capital  
20 murder?

21 A. Uh-huh.

22 Q. You have to use words.

23 A. Yes, I'm sorry.

24 Q. How does what you put, in terms of your answer  
25 on the questionnaire -- you see, it's inconsistent with

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1 sentence the defendant to death. Now is that an  
2 accurate statement?

3 A. I guess. I guess so.

4 Q. Don't guess with me.

5 A. I need to explain something.

6 Q. Go ahead.

7 A. If the prosecution -- and maybe this is not  
8 what you want to hear, but this is what I feel. If the  
9 prosecution could really make me see that, you know,  
10 that he should be sentenced to death, you know, then  
11 maybe I would have a change of heart; but at this point  
12 I don't. And maybe if it actually happened to me, with  
13 my family, then maybe I would feel different; but right  
14 now I just don't.

15 Q. Well, let me ask you some questions. First  
16 off, we know it's not going to happen to your family;  
17 because if that were the case, you couldn't be a juror.  
18 So that's not going to be a possibility. But when you  
19 say right now you just don't, do you mean right now in  
20 the sense that you've heard no evidence?

21 A. No, not that I haven't heard any evidence.  
22 It's just that I don't believe -- you know, I don't  
23 believe in the death penalty. I just don't.

24 Q. All right. Go back to my question again.  
25 Are you saying that if you were a juror in a capital

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1 it being a possible punishment if you were a juror in a  
2 case.

3 A. I couldn't accept -- I couldn't do the death  
4 penalty.

5 Q. Never, ever, ever?

6 A. The prosecution would really have to prove --

7 Q. Ma'am, answer my question.

8 A. Well, I'm trying.

9 Q. Never, ever, ever?

10 A. I don't think so.

11 Q. Okay.

12 THE COURT: Should I go any further?

13 MR. HILL: You should.

14 Q. (BY THE COURT) Let me ask you this: And the  
15 whole idea behind this, Miss Williams, is really pretty  
16 simple. Both sides have the right to have as jurors  
17 people who will give legitimate consideration to all the  
18 possible punishments and come up with what you think is  
19 the right punishment to impose if you found somebody  
20 guilty based upon all the evidence in the case.

21 If I'm hearing you correctly -- -- and you  
22 tell me if I am or if I'm not. If I'm hearing you  
23 correctly, you're telling me that no matter what the  
24 evidence was, you could never answer these questions, as  
25 a juror, in such a way that I would be required to

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1 murder case, and if your jury, you and the other eleven  
2 folks, found that imaginary defendant guilty of capital  
3 murder, you came back and you heard additional evidence  
4 at the second part of the trial for the purposes of  
5 answering these two questions, and you knew if you  
6 answered Question Number One yes and you knew if you  
7 answered Question Number Two no, that I'd sentence the  
8 defendant to death. Would you answer that first  
9 question yes if you thought, based upon the evidence,  
10 that's what the answer should be?

11 A. Yes.

12 Q. Would you answer that second question no if you  
13 thought, based upon the evidence in the case, that  
14 that's what the answer should be?

15 A. Yes.

16 Q. And you understand that?

17 A. Yes.

18 Q. If you answer them yes and no, I would be  
19 required to sentence the defendant to death --

20 A. Yes.

21 Q. -- not you. Would you answer those questions  
22 yes and no, understanding I'd have to sentence the  
23 defendant to death if you thought, based upon the  
24 evidence in the case, those were the right answers to  
25 give?

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1 A. Yes.

2 Q. Do you have any questions for me before we  
3 start?

4 A. No.

5 THE COURT: Mr. McClellan.

6 MR. MCCLELLAN: Thank you, Your Honor.

7 VOIR DIRE EXAMINATION

8 BY MR. MCCLELLAN:

9 Q. Miss Williams, my name is Lyn McClellan. Along  
10 with Claire Connors, we represent the State of Texas in  
11 this case. I want to kind of go back to that same  
12 issue. You filled out in the questionnaire that you're  
13 opposed to the death penalty, okay. There was a  
14 question on Page 13.

15 MR. MCCLELLAN: Do we have a copy there,  
16 Your Honor?

17 THE COURT: Yes, we do.

18 Q. (BY MR. MCCLELLAN) Question No. 70, Page 13,  
19 you checked, I could not vote for the death penalty  
20 regardless of the facts and circumstances of the case.  
21 Is that how you feel?

22 A. Well, after hearing what he explained, I can  
23 understand.

24 Q. Well, tell me what you think. Can you  
25 conceive of yourself ever voting in such a way that

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1 with my conscience. Because of my religious belief, I  
2 just pray that God would, you know, help me to deal with  
3 the decision. You know, as far as I'm concerned, the  
4 decision has already been made by a higher being, as far  
5 as I'm concerned.

6 Q. I understand. Do you understand how I can't  
7 rely upon that?

8 A. I understand that.

9 Q. And you know we're seeking the death penalty.  
10 No doubt about that. We'll be seeking to have people  
11 and we're looking for people that can give us a fair  
12 trial. First thing you started to say up there to the  
13 Judge was, the prosecutor would really, really have to,  
14 you know, prove this case.

15 A. Uh-huh.

16 Q. The burden in a capital murder case is beyond a  
17 reasonable doubt. That's the same burden that's in a  
18 shoplifting case. Some people come and say, well,  
19 you're going to have to prove to me more than that. If  
20 you're asking for me to give the ultimate penalty, that  
21 being death, for me to vote in such a way that death  
22 would result, you're not only going to have to prove to  
23 me beyond a reasonable doubt, I'm going to have to be  
24 one hundred percent certain. Is that the way you feel?

25 A. Yes.

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1 death would result? I mean, not just, well, maybe a  
2 wild, wild possibility, when you go -- the person you  
3 are, I assume, is the person that's in this  
4 questionnaire?

5 A. Yes.

6 Q. I don't believe in the death penalty, don't  
7 think it's a proper type punishment and that you  
8 basically said only God can judge?

9 A. Yes.

10 Q. And should make that type of decision?

11 A. Yes.

12 Q. We're going to be asking people to do that  
13 judging instead of God. That conflicts with, I assume,  
14 your personal, religious, and moral beliefs; is that  
15 right?

16 A. Yes.

17 Q. What we don't want to do is put jurors in a  
18 position to where their job as a juror would do violence  
19 to their conscience. Obviously, if you had to make a  
20 decision and it turns out you made a decision that death  
21 would result, that might do violence to your conscience.  
22 That goes against your religious beliefs or your  
23 personal and moral beliefs as you express them in the  
24 questionnaire; is that right?

25 A. I don't really -- I hope I don't have a problem

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1 Q. I can never prove to you 100 percent certainty.  
2 I promise you that. One hundred percent certain is not  
3 the level of proof that I'm required. I'm not trying to  
4 take you out of it. I'm just telling you what the law  
5 is. And some people say, well, I'm going to hold you to  
6 a higher burden of proof. Because of my personal  
7 feelings, because of my religious feelings and beliefs,  
8 that in order for me to make that type of decision, I'm  
9 going to have to be even more sure than what the law  
10 says I have to be sure, because it's me making this  
11 decision. That may be fine for these other people; but  
12 for me to make a life and death decision, I'm going to  
13 have to be one hundred percent certain. Is that the way  
14 you feel?

15 A. I don't really have to be one hundred percent,  
16 but you would have to really show me, prove to me.

17 Q. Would you require -- would you expect more  
18 proof in a case where the State's going to seek the  
19 death penalty than you would in a case where the State's  
20 going to ask for a fine and jail time?

21 A. I would hope it would --

22 Q. Wouldn't you demand more proof in a death  
23 penalty case than you would in any other type of case?

24 A. Yes.

25 Q. That's how you really believe, isn't it?



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1 A. Yes.

2 Q. I'm not trying to --

3 A. I understand.

4 Q. I'm just trying to get what your feelings are.

5 A. Yes, I understand.

6 Q. All right. So you would, in effect, be saying  
7 that you're demanding more proof than just beyond a  
8 reasonable doubt; because that's the burden of proof in  
9 every criminal case, and that doesn't make it bad or  
10 anything. That's just how you feel. Is that the way  
11 you feel?

12 A. It wouldn't have to be 100 percent, but --

13 Q. But it would have to be more than beyond a  
14 reasonable doubt?

15 A. Yes.

16 Q. More than the type of proof you would expect in  
17 a non death case?

18 A. No, not necessarily.

19 Q. Well, I mean, you tell me that you want to be a  
20 hundred percent certain, and then you tell me you don't  
21 want to be a hundred percent.

22 A. I want to be certain.

23 Q. I understand. My question: Would you require  
24 more proof in a death penalty case than in any other  
25 type of case? And you said yes. Is that the way you

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1 feel?

2 A. Yeah, especially when somebody's life is at  
3 stake, yeah.

4 Q. Nothing wrong with that.

5 A. Yes.

6 Q. Don't believe me?

7 A. Yes.

8 Q. Now when you say that, can you see how you're  
9 saying that you would require more proof than just  
10 beyond a reasonable doubt? Because that's what is  
11 required in all cases.

12 A. Yes.

13 Q. You see the logic of how that works?

14 A. Yes.

15 Q. So are you telling me and are you comfortable  
16 with that fact that you would require me to prove our  
17 case more than just beyond a reasonable doubt? Because  
18 that's what's required in the other non death cases.

19 A. Yes.

20 Q. So you would require more proof in a death  
21 case?

22 A. Yes.

23 Q. And you believe -- or you tell me -- that you  
24 could not vote to assess the death penalty, regardless  
25 of the facts and circumstances, unless I prove that to

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1 that higher level of proof --

2 A. Yes.

3 Q. -- is that correct?

4 A. Yes.

5 Q. I would submit the juror --

6 THE COURT: Don't read this as a ruling,  
7 but do you have any other questions for Miss Williams?

8 MR. MCCLELLAN: Yes, I do. Depends on  
9 that ruling.

10 THE COURT: No. I said don't take this as  
11 a ruling.

12 MR. MCCLELLAN: Right.

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q. Miss Williams, let me ask you a couple of  
16 questions please. Before I ask, I want you to know it's  
17 not important to me what your answer is. It is  
18 important to me that I understand your answer and that  
19 you answer consistently. Because you see, if you give  
20 us different answers, then I have no idea where we are.

21 Now we've talked Friday and today about  
22 the State being required to prove a person's guilt  
23 beyond a reasonable doubt. We talked today about the  
24 State having to prove the answer to that first question  
25 at the second phase of the trial, if there is one. The

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1 State has to prove to you that the answer to this  
2 question should be yes beyond a reasonable doubt. Did  
3 you tell Mr. McClellan that you would require him to  
4 prove it more than that? Is that what you told him?

5 A. Yes.

6 Q. How much more?

7 A. I really don't know.

8 Q. You remember when we talked to you earlier  
9 today about the difference between probability and  
10 certainty? Just because something could possibly happen  
11 doesn't mean it's certain to happen. Can you see how  
12 the State would never prove with an absolute certainty  
13 that something would happen? Does that make sense to  
14 you?

15 A. Yes.

16 Q. Would you require them to prove to a certainty  
17 that something happened to a certainty?

18 A. Yes.

19 Q. Would you require them to prove to a certainty  
20 that something happened?

21 A. Yes.

22 Q. You just told me you understood that nobody  
23 could. And I'm not trying to trick you, but you see  
24 your answers aren't necessarily the same. And my  
25 question to you is this: I understand the difference

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1 between a juror wanting to be perfectly satisfied that  
2 the decision they're reaching is the accurate decision.  
3 I understand that. But I also understand that a jury  
4 could be perfectly satisfied that they are reaching the  
5 right decision by deciding a person's guilt or by  
6 answering that first question if the State proves it  
7 beyond a reasonable doubt. Can you see what I'm saying?

8 A. If they prove beyond a reasonable doubt that  
9 this happened, then I guess I would have to say yes.

10 Q. That's my question.

11 A. I wouldn't have to, but --

12 Q. But I want to know, would you?

13 A. Yes, uh-huh.

14 Q. So can you see now -- if I'm hearing you  
15 correctly, you're telling me that you're not going to  
16 make the State prove something to a greater burden than  
17 beyond a reasonable doubt?

18 A. Oh, no, I wouldn't expect them -- you know,  
19 maybe I didn't understand the way it was worded or  
20 something, but I wouldn't -- like you said, I wouldn't  
21 expect them to go beyond the limits of what he felt he  
22 would have to do. If he could prove to me that this is  
23 what happened, then I would say yes, you know; but it  
24 would have to be with no doubt.

25 Q. Now you said something, Miss Williams, and I

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1 recognize you're in a place where you're not used to  
2 being. You said, he would have to prove it. He doesn't  
3 have to prove it, according to the law, beyond a  
4 reasonable doubt. Now the question really boils down to  
5 this: Can you see that while he's perfectly willing to  
6 abide by the law and accept a challenge to prove a  
7 person's guilty beyond a reasonable doubt? Can you see  
8 how unfair it would be if a juror ignored the law and  
9 said, no matter what the law said, I'm going to make you  
10 prove it to me more?

11 A. Oh, yeah, I understand. I can see that.

12 Q. Would you do that? Would you make him prove a  
13 case more than what the law required?

14 A. No, not more than what the law requires, no.

15 THE COURT: Go ahead, sir.

16 VENIREPERSON: I'm sorry.

17 VOIR DIRE EXAMINATION

18 BY MR. MCCLELLAN:

19 Q. Miss Williams, I'm not concerned about what  
20 other jurors are required to do. I'm not concerned  
21 about what other jurors will do or whatever. I'm  
22 concerned about what you would do. You've told me that  
23 you oppose the death penalty; is that right?

24 A. Yes.

25 Q. Don't think it's a proper type punishment --

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1 A. No.

2 Q. -- for crimes that we ought to have?

3 A. No.

4 Q. If you could do away with it, you would do away  
5 with it?

6 A. If I had my way, yes.

7 Q. And you know that forty years -- if a person  
8 gets a life sentence, he gets forty years day for day;  
9 and that's a lot of time.

10 A. Yes.

11 Q. You've indicated on here that you could not  
12 vote for the death penalty regardless of the facts and  
13 circumstances; isn't that right?

14 A. That's what I put on here. But after having it  
15 explained just a little clearer --

16 Q. You told me that you would require me to prove  
17 my case because we're seeking death. You understand how  
18 serious it is; because you oppose death as punishment,  
19 right?

20 A. Yes.

21 Q. And before you would ever be comfortable in  
22 assessing the death penalty, you've told me, and I  
23 assume you're telling me -- correct me if I'm wrong --  
24 that you would require more proof than you would expect  
25 in any other type of case, because we're seeking the

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1 death penalty?

2 A. Not after -- not after the Judge and I talked.  
3 I can see clearer now.

4 Q. You can see to where it's now changed your  
5 mind?

6 A. Yes.

7 Q. You're now for the death penalty?

8 A. No, I'm not for the death penalty; but you  
9 don't have to go --

10 Q. You could assess that in the proper case? You  
11 could sit in judgment, sign a jury verdict that says  
12 this person receives death in a proper case, if that's  
13 what you're comfortable doing?

14 A. If you proved it.

15 Q. And would I have to prove it more than I would  
16 any other type case?

17 A. No, not after the explanation.

18 Q. Okay. All right. So on that questionnaire, on  
19 Page 13 there, what would you check then if you don't  
20 believe in Number One, I could not vote to assess the  
21 death penalty regardless of the circumstances, what  
22 would you choose there?

23 A. Probably Number 3, more so now.

24 Q. Okay. That you could consider all the penalty  
25 provided by law and the facts and circumstances of the

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1 case?

2 A. Yes.

3 Q. But going in, you still oppose the death  
4 penalty?

5 A. Yes.

6 Q. But you could vote to assess it and go back and  
7 tell the people at your church or whatever that you  
8 heard a case and you voted to assess the death penalty?

9 A. I would have to if I chose Number 3.

10 Q. Okay. My question is: You don't have to do  
11 anything. I'm just checking. Now, more or less, can  
12 see where the death penalty --

13 A. Yes.

14 Q. -- is a problem?

15 A. Yes.

16 Q. While ago you said you would do away with it if  
17 you could. Would you still do away with it?

18 A. I think so, yes.

19 Q. Don't you think that would always cause you  
20 to -- you're leaning against the death penalty? Would  
21 that be right?

22 A. Oh, yes.

23 Q. Very strong?

24 A. No.

25 Q. When you get down here, and let's say you found

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1 someone guilty of capital murder. Let's say you answer  
2 Issue Number One that he's a continuing threat to commit  
3 future acts of violence. If the answer is yes, you know  
4 he's going to receive the death penalty. And then Issue  
5 Number Two says: Do you find there are any reasons or  
6 circumstances that this person ought to receive life as  
7 opposed to death? In other words, it gives the option  
8 of deciding life as opposed to death, under any  
9 circumstances, that would convince me he ought to get  
10 life as opposed to death.

11 Based upon your beliefs, would you always  
12 then answer that question in such a way that life would  
13 result -- there is no burden there. There is no  
14 requirement of proof. It says, taking into  
15 consideration all of the evidence, including the  
16 circumstance of the crime, the offense, the defendant's  
17 character and background, and his personal moral  
18 culpability of the defendant, there is sufficient  
19 mitigating circumstance or circumstances -- I like to  
20 refer to it as sufficient reasons -- why this person  
21 here would warrant a sentence of life imprisonment as  
22 opposed to death because of your beliefs, because of  
23 your leaning against the death penalty?

24 In that Issue Number Two, would you always  
25 find there are circumstances such that life would be the

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1 appropriate penalty?

2 A. Yes.

3 Q. You will?

4 A. Yes.

5 Q. Regardless of what, you know, that tells you to  
6 go back and look at everything.

7 A. Uh-huh.

8 Q. And when you went back and looked at the crime,  
9 whatever it might be, when you looked at the character  
10 and background of the defendant, whatever that may be,  
11 when you look at his responsibility for the crime,  
12 whatever that may be, you would always find there is  
13 sufficient circumstances that life as opposed to death  
14 ought to apply, because that's what you think, knowing  
15 it's forty years, day for day, that's a long time, that  
16 would always be -- your vote would always be such that  
17 it would be life as the punishment?

18 A. Yes.

19 MR. MCCLELLAN: I submit --

20 VOIR DIRE EXAMINATION

21 BY THE COURT:

22 Q. Miss Williams, you're back to me again. Can  
23 you see how we've come the full circle, Miss Williams,  
24 that we've -- that when you started out with the fact  
25 you could never give the death penalty to the fact that

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1 you could, if you believe beyond a reasonable doubt,  
2 vote for the death penalty to where the second question,  
3 you would always take that death penalty away? Because  
4 the way I heard you answer Mr. McClellan's question was  
5 if you found -- I'm not talking about this defendant,  
6 but any defendants -- if you found them guilty of  
7 capital murder, if you answered that first question yes,  
8 that you did find them to be a future danger, we know  
9 that up to then, the death penalty is going to be  
10 imposed.

11 A. Yes.

12 Q. And it depends on what the punishment to be  
13 assessed is, how the jury answers that second question.

14 A. Yes.

15 Q. Mr. McClellan asked you would you always answer  
16 that second question, because of your feelings against  
17 the death penalty in such a way that death penalty would  
18 be taken away and a life sentence would be substituted  
19 for it? And I thought I understood you to say, yes, you  
20 would always answer it yes so that a life sentence would  
21 always be imposed assessed.

22 A. I guess it would all depend on, in the second  
23 question, whether the circumstances would warrant life  
24 in prison.

25 Q. Well, I agree. Do the circumstances warrant a

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1 life sentence, or do they not?

2 A. It would all depend upon the circumstances.

3 Q. But the way I heard you answer Mr. McClellan is  
4 you would -- you would always say the circumstances did  
5 warrant it?

6 A. You make it clearer than I did.

7 Q. Well, but you see --

8 A. I understand.

9 Q. I'm asking it the second time, and you've  
10 already been through it once. And I just want to be  
11 sure. Are you saying you would not always or you would  
12 always answer one way or the other?

13 A. No, it depends on the circumstances.

14 Q. Ma'am, on that second issue, there is no burden  
15 of proof. It is a stopgap. It gives the jurors the  
16 opportunity to make a decision on the life or death of  
17 this person. There is no decision until you get to  
18 Number Two. You have found a person guilty. You found  
19 he would be a continuing threat to commit future acts of  
20 violence, but that doesn't mean he gets death. Because  
21 you couldn't get death unless all questions are answered  
22 in a certain way. So the second question still has to  
23 be answered.

24 And my question to you is -- because  
25 you're going back and saying, this is an opportunity.

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1 This is what Issue No. 2 gives the jurors -- not only  
2 just you, but all the jurors -- an opportunity to  
3 basically save that person's life, give them a life  
4 sentence as opposed to death. And I would assume, if  
5 someone is opposed to the death penalty, thinks we  
6 shouldn't have it, thinks that this is not the type of  
7 penalty I would have if I were making the laws, that  
8 that person when leaning towards -- against the death  
9 penalty, would then choose to answer this in such a way  
10 that life would result, knowing that it's going to be  
11 forty years, day for day; it will be 2039 before someone  
12 would even be eligible for parole. And if that's the  
13 way you feel, you would be leaning that way and do that,  
14 that's what I need to know.

15 A. I don't think I could answer this now, until I  
16 heard the case.

17 Q. So even after, you think you could still answer  
18 that question in such a way that death would result?

19 A. Yes, but I'd have to hear the case first.

20 Q. There's an area that I need to go into because  
21 of certain requirements to serve as jurors in Texas.  
22 And you may remember the case several years ago of the  
23 cheerleader mom, or whatever, somebody who hired someone  
24 to kill a girl who was trying out for cheerleader, and  
25 she was tried. You don't remember that case?

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1 A. Very vaguely.

2 Q. But that case was reversed or thrown out,  
3 because somebody was on the jury who had a conviction  
4 for an offense, okay. The law says if someone is  
5 convicted of theft, they cannot serve as a juror in any  
6 criminal or civil case. Now in June of this year, did  
7 you have an occasion to go to court in Brazoria County?

8 A. No.

9 Q. You're Joyce Ann Williams; is that right?

10 A. Yes.

11 Q. And your date of birth is what?

12 A. 6-27-50.

13 Q. Okay. And we have -- we have to check the  
14 records of all the people, and your name came up as  
15 having been convicted of theft in Brazoria County on a  
16 theft by check case.

17 A. Really? That's news to me.

18 Q. So you never went to court in Brazoria County?

19 A. No. Where is Brazoria County?

20 Q. I guess it's Angleton.

21 A. I have no business there.

22 Q. Okay. So that's not you?

23 A. No, it's not. And I'd like, if I could have a  
24 copy of that, to try and find out about it.

25 Q. Well, we'll do some more checking on that to

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1 see if, in fact, it is -- comes back to you or whether  
2 it's some other person with the same name or whatever.

3 A. I'd really like to know about that.

4 Q. Okay. Back to the issue on the death penalty.  
5 Knowing your opinions and beliefs about the death  
6 penalty, do you think you could be fair to the State of  
7 Texas in this case?

8 A. Yes.

9 MR. MCCLELLAN: I'll pass the witness.

10 THE COURT: Mr. Hill, do you have any  
11 questions?

12 VOIR DIRE EXAMINATION

13 BY MR. HILL:

14 Q. I just have one question, because you've spent  
15 a lot of time up there. Is there anything about you,  
16 about how you feel or whatever, whatever makes you tick  
17 and whatever makes you who you are -- I'm sitting here  
18 representing with Mr. Wentz Charles Mamou. Is there any  
19 reason at all that we should not feel comfortable  
20 selecting you to sit on this jury in this case?

21 A. No.

22 Q. Thank you, ma'am.

23 THE COURT: Miss Williams, in just a  
24 second I'm going to excuse you. Before I do, may I get  
25 that back from you, please?

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(Prospective juror dismissed.)

NOHEMY BONILLA,

having been first duly sworn, testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Miss Bonilla, before I begin, let me ask you a couple of questions. First question I'm going to ask is to remember back to last Friday, when everybody was together here, and this morning and the conversation we had this morning. Out of everything we talked about up to now, do you have any questions at all for me?

A. Not really.

Q. When you say not really, that means to me that you do have some but you don't want to ask them.

A. No.

Q. No means you don't have any.

A. Okay, no.

Q. Is there anything up to this point, Miss Bonilla, that we have not touched on that you feel like we ought to talk about because it might have some bearing on your service as a juror?

A. No -- well, how long is this going to last?

Q. Well, as we said last Friday, we're talking to you today. There is a chance we may get you back here on September the 29th, which is a week from tomorrow;

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for maybe, at the most, two weeks?

A. Depends, because you know, with this --

Q. Now I'm asking the questions. It's perfectly natural for you to answer me, but these folks have to also hear your answer.

A. Well, depends; because right now -- it's like, right now I feel like I can come to this and everything. But what happens if something happened to me? You never know, because I'm pregnant right now and the doctor said it might come early or later.

Q. Well, we're figuring the trial's going to be over with by October the 15th. Now there is no way -- have you had any difficulty with your pregnancy up to now?

A. Not yet.

Q. So there is nothing that has occurred that makes you believe you are going to have any difficulty; is that correct?

A. Yes.

Q. Well, let me say this: If anything does come up, obviously we're going to get you taken care of.

A. Uh-huh.

Q. So with that in mind, are you saying that as far as you know, your pregnancy would not prevent you from being a juror for the two weeks the first of

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because what we're doing is talking to people one at a time to create a panel of about forty-five people. We get all forty-five people in here next Wednesday. And out of that forty-five on that day, we'll decide who the jurors are. I won't, but the lawyers will.

The evidence in the case, if you're selected as a juror, will begin on Monday, October the 4th, which is two weeks from yesterday.

A. Okay.

Q. The trial, we know, will last for more than one week, but we don't believe it will last longer than two weeks.

A. Okay; because if it's December, I'm due in December.

Q. No, no, no. We'll all be -- you'll long since have forgotten us by December. Now -- and I was going to ask you about your circumstance, because you're pregnant. And if you're due in December, you're a little over six months?

A. Six months.

Q. Is this your first?

A. Yes.

Q. Tell me, Miss Bonilla, do you feel that your physical circumstance is such that it would in any way interfere with your ability to be a juror in this case

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October?

A. No.

Q. Okay. Is there anything at all that you can think of, whether it be something -- are you still working?

A. Yes, I work.

Q. Anything at all about your job, anything at all about your family life, anything at all about your health, or anything else you feel would interfere with your service as a juror?

A. No, sir.

Q. Can you see, based upon the conversation we've had up to now, Miss Bonilla, in terms of being sworn in, all we're trying to do is to make sure whoever the twelve jurors are in a case, whoever they are, they won't require either side to do anything that the law doesn't require of them; everybody that's a juror is open to listening to all of the evidence, find him guilty if that's what you think you should do based upon the evidence, find him not guilty if that's what you think you should do based upon the evidence. Can you do either one of those things?

A. Yes, sir.

Q. Can you, also, if you find a person guilty of capital murder, answer these questions knowing if you

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1 answer them in one way, I'm going to sentence the  
2 defendant to death; but if you answer them a different  
3 way, I'm going to sentence the defendant to life. Are  
4 you open to answering these questions either way?

5 A. Yes, sir.

6 Q. But depends upon the evidence in the case?

7 A. Yes, sir.

8 Q. Before we begin, do you have any questions for  
9 me?

10 A. No, sir.

11 Q. Okay. Thank you.

12 THE COURT: Mr. McClellan.

13 MR. MCCLELLAN: Thank you, Your Honor.

14 VOIR DIRE EXAMINATION

15 BY MR. MCCLELLAN:

16 Q. Miss Bonilla, my name is Lyn McClellan. Along  
17 with Claire Connors, we represent the State of Texas in  
18 this case. Tomorrow is Wednesday. We want to know what  
19 the numbers are for the Lotto tomorrow so we can win.

20 You can't give it to us?

21 A. I wish I could.

22 Q. You would probably keep it for yourself?

23 A. Yes.

24 Q. I thought I'd try. Let me ask you, if I can,  
25 just to tell us in your own words what your opinion is

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1 because I don't feel like -- I mean, like I say, I don't  
2 have the right to decide, like, if he's going to be  
3 committed to death or a life sentence. That's -- I  
4 don't know.

5 Q. Okay. Now, of course, the law says you do have  
6 the right. And you're saying you, personally, don't  
7 believe that you have that right?

8 A. Yes.

9 Q. All right. Would that prevent you, then, from  
10 listening to evidence and deciding that someone should  
11 receive the death penalty if that's what the evidence  
12 called for?

13 A. Well, if he committed a crime, you have to pay  
14 for it. I understand that right.

15 Q. And that's what we're talking about. And we're  
16 talking, though, about your ability to sit over here and  
17 making that type of decision. Can you do that?

18 A. I think I can.

19 Q. All right. And if the answers to the questions  
20 were in such a way that the death penalty would result,  
21 can you vote for that to occur?

22 A. Yes, sir.

23 Q. Now you said while ago that you had some  
24 concern about, who are you to decide if someone dies?

25 A. Yes, well --

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1 about the death penalty.

2 A. Depends, because I think it's -- nobody has the  
3 right to take somebody else's life.

4 Q. Do you think the death penalty is a proper type  
5 punishment in certain types of cases?

6 A. Yes, depends how the murder was committed.

7 Q. Some people come to us and say they believe in  
8 the death penalty; but they do not believe that they,  
9 themselves, could ever participate in a process whereby  
10 they would be called upon to make decisions that they  
11 knew would result in this Judge ordering the execution  
12 of this defendant sitting over here on trial. Do you  
13 have any doubts about your ability to participate in  
14 that type process and make that type decision if that's  
15 what the law and the evidence called for?

16 A. Well, I can be agreeable about the death  
17 penalty; but I don't think I can, like, decide somebody  
18 else's destiny in that way.

19 Q. So you don't think you could ever serve as a  
20 juror to make those type decisions? Is that what you're  
21 saying?

22 A. Yes, sir.

23 Q. Okay. And that is because of your religious  
24 beliefs, or personal beliefs, or what?

25 A. It's not because of religious. It's just, it's

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1 Q. But you now understand that's what this process  
2 is about?

3 A. Yes.

4 Q. Now some people have religious beliefs that  
5 prevent them from sitting in judgment of another person.  
6 Do you have any religious beliefs that would keep you  
7 from being a juror?

8 A. No, sir.

9 Q. You believe in the death penalty, right?

10 A. Yes.

11 Q. For certain types of crime?

12 A. Uh-huh.

13 Q. And if the crime was, quote, "bad enough," you  
14 think you could vote for the death penalty if that's  
15 what the evidence showed?

16 A. Yes, sir.

17 Q. You understand this is a capital murder case;  
18 obviously, someone has died?

19 A. Uh-huh.

20 Q. You're obviously going to see pictures or  
21 photographs of dead people or person or persons. You  
22 may see evidence of blood in that kind of situation.  
23 Because of your condition of being pregnant, do you  
24 think that would affect you, or would you still be able  
25 to sit there and listen to that type of evidence and

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1 make the type of decision that the evidence called for?  
2 Only you know that. That's why I'm asking you.

3 A. Well, I never -- I don't know; because, I mean,  
4 I never been like this. You know, you see that on TV,  
5 but not actually living that.

6 Q. You don't have any reason to believe, do you,  
7 that that would keep you from serving as a juror, do  
8 you?

9 A. No, sir.

10 Q. In other words, you will be able to see  
11 photographs and all kinds of evidence that you're given  
12 and make a decision based upon the evidence that you  
13 got, could you not? You -- let me just give you some of  
14 these statements and see if you can tell me whether you  
15 agree or disagree with the.

16 The death penalty is absolutely justified.  
17 Do you agree with that or disagree?

18 A. I agree.

19 Q. Okay. We must have the death penalty for some  
20 crimes. Do you agree?

21 A. Yes, sir.

22 Q. What kind of crimes do you think we ought to  
23 have the death penalty for?

24 A. For sexual harassment, or any kind of abuse  
25 about kids, or any person.

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1 A. No, sir.

2 Q. In a capital murder case we have to believe the  
3 defendant intentionally took the life of another person  
4 without any legal justification during the course of the  
5 kidnapping, okay. If we prove that someone killed  
6 someone during the kidnapping, intentionally did that  
7 act, prove that beyond a reasonable doubt, you would  
8 have to find someone guilty of capital murder.

9 A. Yes, sir.

10 Q. And I assume you could do that?

11 A. Yes, sir.

12 Q. If you found someone guilty of capital murder,  
13 then you're asked to answer these questions over here on  
14 the board. Issue Number One says: Do you find from the  
15 evidence -- don't let me jump ahead too fast. At the  
16 punishment stage of a trial, you may hear more evidence  
17 than you already heard at guilt or innocence. You may  
18 hear evidence about a defendant's character, his  
19 background or criminal history, or lack thereof, without  
20 the individual himself; because you're making a decision  
21 as to what punishment the person should receive for the  
22 crime that he's committed. If you found someone guilty  
23 of capital murder, intentionally taking the life of  
24 someone without any legal justification, do you have a  
25 thought as to what the punishment should be for that

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1 Q. Death penalty is just and necessary?

2 A. Sometimes it is.

3 Q. Okay. Death penalty gives a criminal what he  
4 deserves?

5 A. Well, sometimes.

6 Q. The death penalty is always justified for  
7 intentional murder. By intentional murder, you're  
8 talking about if you intentionally go out and take  
9 someone's life, that basically you should have to pay  
10 with your own life.

11 A. Yes, sir.

12 Q. Do you agree with that?

13 A. Yes, sir.

14 Q. The death penalty should be available as  
15 punishment for more crimes than it is now.

16 A. Yes.

17 Q. Do you think we have a crime problem in Harris  
18 County?

19 A. Yes, sir.

20 Q. You, as a young woman, do you think crime is --  
21 do you fear crime could possibly affect you or your  
22 family?

23 A. Yes. It could happen to anybody.

24 Q. Have you ever known someone who has been the  
25 victim of any type of violent crime?

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1 type of crime?

2 A. Depends how the murder was committed, how he  
3 did it or, you know --

4 Q. Circumstances of the crime --

5 A. Yes.

6 Q. -- would help in determining as to whether or  
7 not he ought to receive death or life?

8 A. Yes, sir.

9 Q. Issue Number One then asks you to determine  
10 whether or not you believe that the person on trial --  
11 there is a probability that that person would be a  
12 continuing threat to commit future acts of violence,  
13 okay? You've already found him guilty of capital  
14 murder, committing an act of violence where you took  
15 someone's life during a kidnapping. You're then asked  
16 to determine whether or not you think that person would  
17 be a continuing threat to commit future acts of  
18 violence. What kind of information do you think would  
19 be helpful in making that type of decision?

20 A. If he committed anything else before this.

21 Q. And, of course, there again, we don't have to  
22 show -- when it talks about criminal acts of violence,  
23 we're not talking about whether or not he's likely to  
24 commit another murder or capital murder; because  
25 criminal acts of violence could be any criminal act that

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1 is violent. It could be robbery, could be burglary,  
2 could be sexual assault. Could be any type of thing  
3 where you intentionally inflict harm on someone.

4 Okay. Do you think you would be open to  
5 listening to the evidence and determining whether or not  
6 you thought that person, who you already found guilty of  
7 capital murder, would, in fact, commit criminal acts of  
8 violence that would be a continuing threat?

9 A. Yes, sir.

10 Q. There is a question on your questionnaire where  
11 it says -- you checked this statement as agree with it.  
12 There are some kinds of cases in which I know I could  
13 not vote for the death penalty even if the law allowed  
14 me to, but others which I would be willing to consider  
15 voting for it. Can you think of any kinds of cases  
16 where you could not vote for the death penalty even if  
17 the law allows you to?

18 A. Well, depends, like again, how he committed the  
19 murder or whatever he did. And then it depends, like,  
20 how he felt at that time, too; because some people -- I  
21 heard them. You know, that's the news. They get  
22 excited when they kill. Somebody like that, he deserves  
23 that death penalty.

24 Q. I didn't hear that last part.

25 A. Well, depends how he felt at the time.

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1 based upon what they have done and the fact they would  
2 be a continuing threat to the future, would that put you  
3 in an uncomfortable situation?

4 A. Yes.

5 Q. Could you -- how could you resolve that? Talk  
6 to me about how that makes you feel or whatever.

7 A. Because some people spend some time in jail.  
8 They get out and do the same thing again or do worse  
9 things than what they did before. You never know if  
10 he's going to -- somebody's going to get out of jail and  
11 shoot and kill your family.

12 Q. So the fact that you're about to give birth to  
13 someone, are you saying that wouldn't affect your  
14 ability to serve as a juror and, if the evidence called  
15 for it, to vote for the death penalty? If that's what  
16 the evidence called for, you could still do that?

17 A. Yes, sir.

18 Q. Thank you, Miss Bonilla. I appreciate your  
19 time.

20 VOIR DIRE EXAMINATION

21 BY MR. HILL:

22 Q. Miss Bonilla, would it be easier if I sat up  
23 there?

24 A. No.

25 Q. I'll sit over there. This really blocks my

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1 Q. Whether he's remorseful or not?

2 A. Yes.

3 Q. Okay. Some people might be remorseful for what  
4 they did, thinking they did something wrong and think,  
5 oh, my gosh, why did I do that? And somebody else,  
6 though, might brag to people what they did.

7 A. Yes.

8 Q. Do you think that would be a factor?

9 A. Uh-huh.

10 Q. But is there any particular type of crime that  
11 you think, if I heard capital murder, murder plus some  
12 other crime, anything you can think of that you would  
13 say, well, in those kind of cases, I could never give  
14 the death penalty?

15 A. No.

16 Q. You know we've alleged here a murder during a  
17 kidnapping. If the circumstances of the case called for  
18 the death penalty, is that the kind of case you could  
19 give the death penalty if that's what the facts  
20 dictated?

21 A. Yes, sir.

22 Q. You know you're in a situation where, in a few  
23 months, you're going to be giving life, giving birth to  
24 someone. You're now being asked to potentially sit on a  
25 jury where you may have to take someone's life; but

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1 view of you. I'm just going to ask you a few questions,  
2 okay. When I look at the questionnaire that's filled  
3 out by the prospective jurors, I try to see things and  
4 kind of zero in on things that might cause me concern.  
5 And I find usually when I talk to people and I ask them  
6 what they were thinking when they wrote out an answer  
7 and they explain their answer, it usually gives me a  
8 much better feeling of what they're thinking.

9 Now one of the questions asks you, what is  
10 your opinion about -- and it asks you about prosecutors.  
11 And you say, they try to make the law work. And when  
12 asked about defense lawyers, they will defend you  
13 whether you're guilty or not. Can you explain that  
14 answer a little bit more fully, representing somebody  
15 whether they're guilty or not?

16 A. To me, the defense is somebody that's going to  
17 try to do the best for you if you commit any crime. I  
18 mean, they're going to try to make your sentence less  
19 than what somebody else would do.

20 Q. Okay. Do you assume when you start out on a  
21 case that the person that is sitting at the counsel  
22 table and is named the defendant must have done  
23 something serious, or can you presume, as the Judge  
24 instructs you to do, that that person is not guilty  
25 unless and until the State proves to your satisfaction



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1 and twelve -- eleven other people that that person  
2 committed a crime?

3 A. Yes, sir.

4 Q. See, I think you can read that answer several  
5 different ways. If I read that answer to mean you  
6 assume that everybody is guilty, then we probably don't  
7 have much of a chance of having a fair trial, you see.  
8 But if what you're saying is you would expect a lawyer  
9 that represents somebody accused of a crime to do the  
10 best he or she can do to represent their clients, I'm  
11 comfortable with that. Is that more like what you're  
12 saying?

13 A. Yes, sir.

14 Q. Well, Mr. McClellan asked you the question  
15 about the Lotto. He wanted to know the winning numbers.  
16 Let me ask you this: Have there ever been any big  
17 winners there at Fiesta?

18 A. Yes, sir.

19 Q. What was the biggest one?

20 A. Like, three years ago.

21 Q. Was it like --

22 A. Fourteen million.

23 Q. All right. Here's another question that's  
24 asked of you. It has to do with the -- what is the best  
25 way to achieve the purpose of meting out punishment for

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1 you tell me prior to the Judge telling you what it  
2 really is what your views about what a life sentence  
3 was? Did you have some number of years throwing around  
4 that you thought somebody might serve before they were  
5 released?

6 A. Yes.

7 Q. How many years?

8 A. Probably ten.

9 Q. You understand that, just as the Judge told  
10 you, if a jury finds Mr. Mamou guilty of capital murder,  
11 if that jury then returns a finding of life in prison,  
12 there is no way that he even is considered, under any  
13 circumstances, for release on parole prior to the Year  
14 2039, forty years from now. In other words, you're  
15 twenty-three?

16 A. Yes.

17 Q. Your twenty-three years, add seventeen more to  
18 it. So when you're forty years old, seventeen years  
19 from now, that would be -- I'm sorry -- that's how many  
20 years we'd be talking about, forty full years.  
21 Obviously, if you were to give a life sentence on this  
22 case, it would be the Year 2039. Are you comfortable  
23 with that, and would your answer to life, being severe  
24 or not severe, change?

25 In other words, do you think life in

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1 a crime? And basically it says, whatever the defendant  
2 did, they should get, in terms of their punishment, kind  
3 of an eye for an eye type of statement.

4 You now know, based on what the Judge has  
5 told you, that in Texas, before the death penalty can be  
6 assessed, it is necessary for the jury to make several  
7 different findings. Obviously, you would have to find  
8 the person guilty of capital murder before you would  
9 ever even be presented with the issue of the death  
10 penalty. Are you the type of individual -- because you  
11 have your background, your upbringing, everything that  
12 makes you who you are -- are you okay with the idea that  
13 if you found somebody guilty of capital murder and you  
14 didn't believe that was a case that required the death  
15 penalty that would you be able to vote for life in  
16 prison and be comfortable with that?

17 A. Yes, sir.

18 Q. Because the only other question I have for you  
19 is when you answered one of the questions about, do you  
20 think that life in prison is a severe penalty, you put  
21 no. Now was that before you understood what life in  
22 prison in Texas in this case actually means?

23 A. Yes, sir.

24 Q. Prior to the Judge explaining it to you -- and  
25 everybody that's come here has different views. Could

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1 prison -- knowing it's a mandatory forty years, day for  
2 day, do you now think life is a severe punishment?

3 A. Yes, sir.

4 Q. Do you have any questions of me?

5 A. No, sir.

6 Q. Because this is the only chance you get to ask  
7 us questions.

8 A. No.

9 Q. Do you think you would like to serve on this  
10 jury?

11 A. Yes, sir.

12 Q. You think both sides would get a fair trial out  
13 of you?

14 A. Yes.

15 Q. Okay. Thanks.

16 (Court admonishes juror.)

17 (Prospective Juror brought back in.)

18 THE COURT: May I ask you a question?

19 VENIREPERSON: Yes.

20 THE COURT: Before I do, let me take a  
21 look at something. Where were you born?

22 VENIREPERSON: El Salvador.

23 THE COURT: Are you a citizen of the  
24 United States?

25 VENIREPERSON: Yes.

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1 THE COURT: Thank you very much.  
2 LINDA DEATON,  
3 having been first duly sworn, testified as follows:  
4 VOIR DIRE EXAMINATION

5 BY THE COURT:

6 Q. How are you today?

7 A. Fine.

8 Q. Good. Miss Deaton, first off, let me ask you  
9 to remember back to last Friday, when the whole group  
10 was together, and the things we talked about that day.  
11 Add to it this morning, what we talked about this  
12 morning. And out of everything we have talked about so  
13 far, do you have any questions at all for me?

14 A. No.

15 Q. Is there anything to this point, Miss Deaton,  
16 that we have not yet addressed that you feel as though  
17 we should talk about because it might have some bearing  
18 on your ability to be a juror in this case?

19 A. I don't think so.

20 Q. Is there anything at all that you can think  
21 about, personally, whether it be something about your  
22 personal life, or your health, whether it be anything  
23 else for that matter, that you can think of that would  
24 in any way interfere with your ability to be a juror in  
25 this case during the time frame we've discussed?

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1 A. No.

2 Q. As I said this morning, Miss Deaton, I think  
3 this phase of the trial is primarily meant to accomplish  
4 two objectives. The first one being to share with the  
5 jurors the rules that can come into play during the  
6 course of a trial such as this. And in terms of what we  
7 have talked about so far, in terms of the rules, are  
8 there any of them that you find you have any objection  
9 to?

10 A. No.

11 Q. So, then, if I'm hearing you correctly, are you  
12 saying if you were a juror in the case, if any of these  
13 rules we have talked about do come into play, as a  
14 juror, you would be willing to both follow and enforce  
15 them?

16 A. Yes.

17 Q. The second thing, Miss Deaton, is for everybody  
18 to make certain, certainly with yourself and the  
19 lawyers, too -- make certain if you do become a juror in  
20 the case, you would base your decision on how you  
21 evaluate whatever evidence was presented. Does that  
22 sound like you?

23 A. Yes.

24 Q. Idea being you're just as likely to reach one  
25 verdict as you are another. Do you have, before the

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1 trial begins, any preconceived idea about what verdict  
2 you should reach?

3 A. No.

4 Q. You're just wide open to doing whatever you  
5 think the evidence in the case warrants?

6 A. Right.

7 Q. Can you also see, Miss Deaton, from our  
8 conversation this morning how each of the three  
9 decisions the jury could be called upon to make that,  
10 being the question of guilty, and if he is guilty of  
11 capital murder, answers to these two questions. Each  
12 decision is independent then of what the next question  
13 asks of you.

14 A. Yes.

15 Q. So, therefore, your decision as to one aspect  
16 does not dictate, in and of itself, what the next answer  
17 should be. And you're comfortable with that?

18 A. Yes.

19 Q. Before we begin, have you any questions for me?

20 A. No.

21 Q. Just relax, and you'll be out of here before  
22 long.

23 THE COURT: Miss Connors.

24 VOIR DIRE EXAMINATION

25 BY MS. CONNORS:

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1 Q. My name is Claire Connors, and this is Lyn  
2 McClellan; and we represent the State of Texas. Are you  
3 nervous at all?

4 A. Yes.

5 Q. Try not to be. Just because I'm going to  
6 explain some concepts to you, I want you to have some  
7 questions for us. And obviously, you know how we feel  
8 about certain things. How do you feel about the death  
9 penalty?

10 A. I think it's a necessary evil.

11 Q. When you say evil, what do you mean?

12 A. I think it's a very tragic thing that would  
13 have to have happened to someone.

14 Q. Did you ever have a different opinion about the  
15 death penalty?

16 A. No.

17 Q. Do you believe that you could sit over here in  
18 one of these chairs as a juror and decide whether or not  
19 someone should get the death penalty?

20 A. Yes.

21 Q. And you understand that Mr. McClellan and I,  
22 after the close of the evidence, we will ask the jury to  
23 sentence this defendant to the death penalty?

24 A. Yes.

25 Q. Miss Deaton, what type of cases do you think

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1 are appropriate for someone to get the death penalty?

2 A. I think if you take another person's life that  
3 it could be appropriate.

4 Q. In your questionnaire, when you were asked  
5 about your feelings about the death penalty you said,  
6 only for severe acts. What did you mean by that?

7 A. Murder, possibly rape.

8 Q. And do you understand now that the death  
9 penalty applies -- there is basically two crimes  
10 oftentimes? Murder's the intentional taking of another  
11 without a legal reason, and in this case aggravated  
12 kidnapping. There is aggravated rape -- I'm sorry --  
13 rape, burglary, killing a police officer, killing a  
14 child under six. There's different circumstances when  
15 the death penalty applies. You understand that now,  
16 right?

17 A. Uh-huh.

18 Q. Did you know that before you filled out your  
19 questionnaire?

20 A. No.

21 Q. And you understand the burden of proof is on  
22 the State, and we have to prove to you beyond a  
23 reasonable doubt that this man is guilty of capital  
24 murder. And you understand that beyond a reasonable  
25 doubt is not so that you're a hundred percent sure,

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1 answered yes or no?

2 A. Yes.

3 Q. Miss Deaton, in your mind, probability -- what  
4 is your definition of probability?

5 A. Well, it would be that he would likely commit  
6 another, or that he would more likely.

7 Q. And do you understand that the criminal acts of  
8 violence could be violence either to property, for  
9 example, a burglary, or some type of assaultive offense  
10 to a person? You understand that?

11 A. Yes.

12 Q. If you answer that you could believe a  
13 defendant will be a continuing threat to society, a  
14 probability a defendant will be a continuing threat to  
15 society, you answer that question yes, you understand a  
16 defendant will get the death penalty, right? You  
17 understand that. Unless you get to Special Issue Number  
18 Two and you answer that question that there is  
19 sufficient evidence to warrant that, that overrides the  
20 death penalty in the first question. You understand  
21 that?

22 A. Yes.

23 Q. It's kind of like the out for the jury. If  
24 they decide they don't want to give the death penalty,  
25 then they can answer this question in such a way the

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1 because you would be a witness. Then you couldn't sit  
2 on the jury. Do you understand that?

3 A. Yes.

4 Q. Would you hold Mr. McClellan and I to the  
5 standard of beyond a reasonable doubt?

6 A. Yes.

7 Q. If you found this defendant guilty of capital  
8 murder, intentional killing while kidnapping, then we  
9 would reach the punishment stage of the trial. Do you  
10 understand that the first issue there, you would have to  
11 listen to the evidence at the punishment stage of the  
12 trial and consider the evidence at the guilt stage of  
13 the trial and decide whether or not this man would  
14 probably commit criminal acts of violence in the future  
15 that would be a continuing threat to society? Do you  
16 understand that?

17 A. Yes.

18 Q. Do you understand, Miss Deaton, that because  
19 you found a person guilty of capital murder, that  
20 doesn't automatically mean that that person will  
21 probably be a continuing threat to society. You  
22 understand that?

23 A. Yes.

24 Q. Could you wait till the punishment stage of the  
25 trial and decide whether or not that question is

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1 death penalty is not opposed by the Judge. Do you  
2 understand that?

3 A. Yes.

4 Q. Can you promise me you would answer that  
5 question based on everything you heard and not just how  
6 you feel? Would you do that?

7 A. Yes.

8 Q. Do you understand in answering these questions,  
9 you have to look at the facts of the case? You have to  
10 look at the defendant's character and background, his  
11 culpability, responsibility? Did he stay home and help  
12 plan out the crime, or was he an active participant?  
13 Did he stab someone or shoot someone, or was he the  
14 getaway driver? What was his participation or  
15 responsibility in the crime? And, also, was there  
16 sufficient circumstance or circumstances that would  
17 warrant the jury deciding that this person would get a  
18 life sentence?

19 A. Yes.

20 Q. Could you consider all that before you made  
21 your decision?

22 A. Yes.

23 Q. When it said, What is the best argument for the  
24 death penalty in our society, you said, Repeat  
25 offenders. What did you mean by repeat offenders?

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1 A. Well, people that you feel would be a threat.  
2 Q. Did you mean necessarily that someone would  
3 have had to commit another murder before they committed  
4 this murder?  
5 A. No.  
6 Q. Would you like to serve as a juror on this  
7 case?  
8 A. Not really.  
9 Q. Why is that?  
10 A. Well, it's a very heavy burden.  
11 Q. Have you been thinking about it since you were  
12 here last week, I guess, when we asked you to come back  
13 here?  
14 A. Yes.  
15 Q. Any reason why Mr. McClellan and I would not  
16 want you to serve as a juror?  
17 A. I don't think so.  
18 Q. Is there any reason why the defense wouldn't  
19 want you to serve as a juror?  
20 A. I don't think so.  
21 Q. Do you consider yourself an open-minded  
22 person?  
23 A. Yes.  
24 Q. Do you consider yourself as someone who can  
25 make a decision -- listen and make a decision after

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1 they've heard all the facts?  
2 A. Yes.  
3 Q. If you found someone guilty of capital murder,  
4 first stage of the trial, what would the punishment be?  
5 A. I don't know.  
6 Q. Why is that?  
7 A. Well, because I wouldn't know the  
8 circumstances.  
9 Q. Thank you, ma'am.  
10 MS. CONNORS: I have no further questions.  
11 THE COURT: Mr. Hill.  
12 MR. HILL: Thank you, Judge.  
13 VOIR DIRE EXAMINATION  
14 BY MR. HILL:  
15 Q. Hi, Miss Deaton. My name is Wayne Hill. Kurt  
16 Wentz and I both represent Mr. Mamou in this case. I  
17 just got a few questions for you. Maybe you could take  
18 a few moments to talk with me, not like an attorney  
19 questioning a prospective juror, but somebody you maybe  
20 met over in the jury assembly room. And rather than  
21 worry about the legalities of what we're doing and how  
22 these questions come into play, just talk to me like if  
23 I met you over there and we were just conversing about  
24 topics while we were waiting to come over here, okay? I  
25 think that makes it a little easier for people to

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1 express themselves.  
2 I always feel like people are under the  
3 gun to give the right answers, and there aren't any  
4 right or wrong answers. We get a wide variety of  
5 responses to the questions we ask. And all we're trying  
6 to do, frankly, is in a short period of time, evaluate  
7 whether you should sit up there with eleven other people  
8 and judge the case.  
9 Miss Connors asked you whether or not  
10 there was any reason that you wouldn't be a good juror  
11 for the State or for the defense. I want to ask it in a  
12 slightly different way. Understand that as a defense  
13 attorney, I am going to do everything I can to convey to  
14 a jury of twelve people that the State has not proven  
15 their case beyond a reasonable doubt. I will  
16 necessarily ask a great deal of questions of the State's  
17 witnesses and will try to establish for the jury the  
18 State has not proven their case beyond a reasonable  
19 doubt. Okay?  
20 Knowing that, I'd like for you to think  
21 for a moment. There are a couple of reasons, couple of  
22 things about you, in particular, that would cause me to  
23 feel a little bit more comfortable having you sit on  
24 this jury than maybe the State would feel comfortable.  
25 A. Well, I don't know why you would feel more

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1 comfortable with me than anyone else.  
2 Q. Are you the type of individual that prejudices  
3 things?  
4 A. No, I try not to. I try to always be  
5 open-minded.  
6 Q. What does that concept mean to you, to be  
7 open-minded?  
8 A. To listen to both sides.  
9 Q. Okay. Now you realize that the defense doesn't  
10 actually have any burden to produce any evidence? In  
11 other words, the Judge had explained to you that if the  
12 State of Texas presented -- they could present a hundred  
13 witnesses, all sorts of documents, all sorts of physical  
14 evidence. But if the jury ultimately was not convinced  
15 beyond a reasonable doubt, the case would end right  
16 there. It wouldn't be necessary for the defense to  
17 either call the defendant to the witness stand or to  
18 call any witnesses at all in order to show, quote, "the  
19 other side of the story." How comfortable are you with  
20 that, even given the fact this is a capital murder case?  
21 A. Well, the only thing I can say is I have  
22 children. I have a son, and I'm glad it's not my son  
23 here. But I would want people to give him the benefit  
24 of the doubt.  
25 Q. You know, we always ask people whether they're

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1 comfortable or whether they feel like their commitment  
2 is such that we can rely upon it before we choose the  
3 other eleven people that are going to be sitting there  
4 with you if you're one of them. So we really put it in  
5 terms of your comfort level. If you were sitting here  
6 in place of Mr. Mamou, you were my client right now.  
7 And I'm talking with you as a client, and we have the  
8 mirror image of Linda Deaton up on the witness stand.  
9 Is there anything at all that you would be whispering in  
10 my ear to say, yes, take her, or no, don't take her?  
11 Because we're not going to know you in a brief period of  
12 time.

13 A. I don't know what I'd do.

14 Q. Have you ever had any experiences with the  
15 criminal justice system?

16 A. No.

17 Q. You did say that you had read some articles  
18 regarding the death penalty, or maybe seen articles on  
19 TV. Can you recall what they were and what they focused  
20 on?

21 A. No. I just read and watch what's on, you know.  
22 I don't make it a point to watch it.

23 Q. You don't dwell on it, but you've seen articles  
24 about it?

25 A. Right.

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1 parts at our fingers and keep them coming and keep the  
2 mechanics out in the garage supplied, and I had to keep  
3 parts moving.

4 Q. Is this a fairly challenging job?

5 A. I enjoyed it. I talked to a lot of people, a  
6 lot of places; so it was a rewarding job. I liked it.

7 Q. And what do you do with your time now? Mostly  
8 you do some gardening?

9 A. I just wake up everyday and decide what I'm  
10 going to do today.

11 Q. Must be nice.

12 A. It is.

13 Q. You prefer that to the usual grind?

14 A. Well, I may get bored and I may decide to do  
15 something else. Last year I chose to pick up a grandson  
16 every day from school, and I enjoyed it. Now this year  
17 my husband is retired, so we're going to do something  
18 different.

19 Q. Have any plans? Are you going to travel at  
20 all?

21 A. We're going to travel some. And my husband  
22 plays golf. I don't. But we're just going to wake up  
23 every day and decide what we're going to do. We haven't  
24 started yet.

25 Q. Really my last questions are probably the most

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1 Q. One of the last questions we asked is for you  
2 to tell us what your neighbors would think about you or  
3 how they would describe you. And you put, Caring and  
4 loving. Are you real close with a lot of your  
5 neighbors?

6 A. Well, in all honesty, I thought about that  
7 question; and I think it would depend upon who you ask,  
8 what day.

9 Q. Fair enough. Have you lived in the same area  
10 for a long time?

11 A. Yes.

12 Q. And the neighbors that you have are fairly  
13 well-established people that lived in the same community  
14 for a long time?

15 A. Some of them are.

16 Q. So what exactly do you do as an expediter for  
17 aircraft parts? Is this where you're sitting out back  
18 and something goes wrong and you have to pull the plane  
19 back?

20 A. Well, yes and no. I don't work now. I don't  
21 know if I wrote it that way.

22 Q. I'm sorry. I missed something.

23 A. I left Continental Airlines in '91, when they  
24 had the big layoff in expediting. I worked at Hobby  
25 Airport, and my job is to keep tabs on all the airplane

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1 serious. One of the things Miss Connors said to you  
2 when she first started on her discussion with you, she  
3 said, At the end of the evidence, we're going to be  
4 asking you to assess the death penalty. Of course, that  
5 presupposes a jury has found Mr. Mamou guilty at all;  
6 and we're doing this part of the voir dire, or the jury  
7 selection, to really concentrate on the death penalty  
8 issue. Because as the Judge told you, if we don't think  
9 about it now, somebody gets on the jury and has a  
10 feeling one way or the other, that doesn't give both  
11 sides a fair trial. It's all for naught. So that's why  
12 we're only concentrating on that issue.

13 You'll be brought back on the 28th, I  
14 believe, and we'll have a brief discussion with you  
15 about maybe some other topics or other issues. But  
16 that's why we're spending so much time on this. But I  
17 want to ask you to think for a moment what we're asking  
18 you to do if you sit on this jury and if the State does  
19 convince you beyond a reasonable doubt that this  
20 individual committed capital murder. Again, your  
21 comfort level is important to us.

22 Are you comfortable with the scheme that  
23 the Legislature has given you, as a jury, to determine  
24 whether or not a person received the death penalty or  
25 life in prison? In other words, these two questions

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1 that are given to you --

2 A. Yes.

3 Q. -- if you were in the Legislature and you were  
4 able to cast a vote to change the system, to do away  
5 with perhaps the system that we currently have and  
6 replace it with a different type of system, would you do  
7 that?

8 A. I would have to study long and hard on that.

9 Q. All right. Would you be the type of  
10 individual, hypothetically, if you were in the  
11 Legislature and you only had two choices -- one was that  
12 everybody convicted of capital murder receives a  
13 mandatory death penalty, or everybody that's convicted  
14 of capital murder receives a mandatory life prison  
15 sentence -- which of those two would you likely choose  
16 if you were having to vote on either of those two?

17 A. Well, if it had to be mandatory, I don't know.  
18 I probably would lean more towards a life sentence.

19 Q. Why do you think that might be?

20 A. Well, I would hate to not have a choice.

21 Q. What is it about the choice that makes you feel  
22 perhaps more comfortable?

23 A. Well, it would be a less drastic action to  
24 take.

25 Q. We want to make sure a jury understands two

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1 (Lunch recess.)

2 TRACI LEE KARAM,

3 having been first duly sworn, testified as follows:

4 VOIR DIRE EXAMINATION

5 BY THE COURT:

6 Q. I have a question. It is my perception that  
7 the name, Karam, is not that common a name. Are you any  
8 relation to George --

9 A. No.

10 Q. -- who's a lawyer in town? He's a friend of  
11 all of ours.

12 A. No.

13 Q. Well, then we like you even better. Miss  
14 Karam, before we begin, let me ask you to remember back  
15 to Friday and the things we talked about that day, and  
16 to this morning, what we talked about. Out of  
17 everything we have talked about so far, do you have any  
18 questions at all from me?

19 A. No.

20 Q. Anything so far that we have not addressed that  
21 you feel as though we should talk about because it might  
22 have some bearing on your service as a juror in this  
23 case?

24 A. No.

25 Q. Anything about your personal life, your

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1 very important factors. Number One, you understand  
2 fully if a person were to receive a life sentence for  
3 capital murder, mandatory day for day, forty years of  
4 their life, before they even become eligible for parole,  
5 as the Judge said, that's 2039.

6 The other thing is, it's important for me  
7 to just see how you feel about, I guess, the prospect of  
8 you actually having to sit in a case like this. This is  
9 kind of the hypothetical. It's quiet. We do it  
10 individually. Is there anything at all that we need to  
11 know that would cause us to be uncomfortable with you  
12 taking a seat with eleven other people and ultimately  
13 deciding a case of this magnitude? Anything at all you  
14 are the least bit uncomfortable with in terms of your  
15 ability to make the decisions, whatever they are, time  
16 constraints that you have, anything? It's that global  
17 question we always try to ask prospective jurors to give  
18 them a fair opportunity to say, hey, you didn't ask me  
19 this; and I think either one of you should know about it  
20 before deciding whether I stay or go.

21 A. I don't know of anything.

22 Q. Do you have any questions of me?

23 A. No.

24 Q. Okay. Thank you.

25 (Court admonishes juror.)

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1 professional life, or health, or any other thing for  
2 that matter, that you can think of that might in any way  
3 interfere with your ability to be a juror in this case  
4 during the time frame we've talked about?

5 A. No.

6 Q. The rules we talked about that potentially  
7 could come into play, out of what you heard to this  
8 point, do you have any disagreement with any of the  
9 rules we talked about?

10 A. No.

11 Q. So if you were a juror, then, if I'm hearing  
12 correctly, you could both follow, as well as enforce  
13 those rules?

14 A. Yes.

15 Q. We spent some period of time this morning on --  
16 or hopefully, we did -- for the purposes of  
17 accomplishing the notion or the understanding that each  
18 of the decisions that a jury makes is independent of  
19 this decision that they just previously made; meaning,  
20 however, the way you answer one question does not, in  
21 and of itself, dictate what the answer to the next  
22 question should be. Instead, you always go back to the  
23 body of evidence when you view the evidence from the  
24 standpoint of what that particular question asks of you.  
25 Does that make sense to you?

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1 A. Yes.

2 Q. The idea being that starting off a trial, a  
3 guilty verdict, not guilty verdict, they're both  
4 equally -- both equal options. Whichever one it would  
5 be would have to depend upon the evidence in the case  
6 and how a jury evaluates it.

7 Likewise, at the second phase of the  
8 trial, the concept is that life and death are both  
9 available sentencing options, whichever one is  
10 appropriate. The jury, we assume -- we hope that you  
11 would select whichever one is appropriate based on how  
12 you viewed the evidence in the case. And some cases  
13 deserve life; some cases deserve death. Which this one  
14 deserves, we'll never know till after all the testimony  
15 is in. Does that make sense?

16 A. Yes.

17 Q. Before we begin, do you have any questions of  
18 me?

19 A. No.

20 Q. Well, just relax. We're not going to be much  
21 longer.

22 THE COURT: Mr. McClellan.

23 VOIR DIRE EXAMINATION

24 BY MR. MCCLELLAN:

25 Q. Miss Karam, my name is Lyn McClellan. Along

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1 who does it intentionally. Also, if it's also been  
2 several crimes where this has happened, if they've been  
3 a convict, ex-convict that comes back out again, or just  
4 somebody who has been involved in criminal activity for  
5 a while.

6 Q. Now you know from listening to the Judge's voir  
7 dire that murder is the intentional taking of another  
8 person's life without any legal justification. By that  
9 I mean, it's not someone who acts in self-defense. It's  
10 not someone who does it by accident. It's when you  
11 intend to kill someone and do so.

12 And for the offense of murder today, the  
13 death penalty does not apply unless it's during the  
14 course of committing some other type of crime. What we  
15 have alleged here is murder during the course of a  
16 kidnapping. There are other crimes, also, that could  
17 constitute the offense of capital murder. But just for  
18 the offense of murder itself, the death penalty doesn't  
19 apply in our state. Some people think it shouldn't.  
20 Some people think it ought to be expanded. We're trying  
21 to get what your feelings and thoughts are.

22 If you become a juror, though, you -- you  
23 may have, depending on what your thoughts and opinions  
24 are, to set aside certain of your opinions and beliefs  
25 and what the law says and what the evidence is in the

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1 with Claire Connors, we represent the State of Texas in  
2 this case. I want to go over your questionnaire and  
3 some of your answers that you gave there and follow up  
4 on some of those answers, and then I want to talk to you  
5 about how certain aspects of the law may apply in this  
6 case and see what your thoughts are about that.

7 First of all, you filled out this  
8 questionnaire several days ago. You've had some time  
9 over the weekend to be thinking about it. Whether you  
10 did or not, I don't know. But have you thought -- any  
11 of your thoughts changed, that you know of, having  
12 thought about being a juror, or anything --

13 A. No.

14 Q. -- that we need to know about?

15 A. No.

16 Q. From reading your questionnaire, it appears  
17 that you're the type of person who believes the death  
18 penalty is appropriate for certain kinds of cases?

19 A. Yes.

20 Q. What kinds of cases come to your mind when you  
21 think of cases where the death penalty ought to be  
22 available as a form of punishment?

23 A. Cases where the criminal has shown to have no  
24 remorse, and it's been a case where a criminal has  
25 killed somebody without any kind of remorse, or somebody

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1 case. Every juror must take an oath that they will a  
2 true verdict render based on the law that's given to  
3 them by the Court in the form of a written charge. It  
4 will be a several-page document that will set out the  
5 elements of the offense, define certain terms, tell you  
6 what murder is, tell you possibly about self-defense,  
7 talk about beyond a reasonable doubt and the definition  
8 thereof, and then take that law and apply it to the  
9 evidence that you're the judge of; because you'll get to  
10 listen to all the witnesses. And you can believe all,  
11 part, or none of what a witness says. You take those  
12 two things and put them together and make your decision.  
13 It might be a different decision than that, if we had  
14 not given the law, that you might have arrived at, okay;  
15 because the law will set out certain guidelines and  
16 restrictions.

17 For example, some people say -- and I know  
18 you put that down as a good argument for the death  
19 penalty -- that basically, if you take another person's  
20 life, you ought to also give your life, an eye for an  
21 eye deal. And that's a philosophy some people have.  
22 And you put that down as the best argument for the death  
23 penalty.

24 But you now know from the way the system  
25 is set up that we don't have any kind of crime in the

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1 State of Texas where you automatically get the death  
2 penalty for having committed that crime. Instead, there  
3 is two parts of a trial. There is guilt/innocence. Did  
4 they commit the crime? And then the punishment stage.  
5 What punishment should they get for the crime we have  
6 found they committed? And there is not anything  
7 automatic for the death penalty. So the eye for an eye  
8 situation, if you believe in that, you have to set that  
9 aside if you're a juror, if you can, and a true verdict  
10 render based on the law and the evidence. Are you the  
11 type of person that could, if you have that opinion, set  
12 it aside and follow the law?

13 A. Yes. This is a real learning experience for me  
14 just these past couple of days, all that stuff I had  
15 never even thought of before, so yes.

16 Q. And you would have no reason to, because that's  
17 something that, unless you're in a jury situation, you  
18 wouldn't know about. And I think the reason a lot of  
19 people come up with they believe in an eye for an eye is  
20 because when they think of capital murder or when they  
21 think of murder, they're thinking then of a very heinous  
22 situation.

23 As the Judge told you, there could be  
24 thousands of fact situations that could constitute  
25 murder or thousands of fact situations that could

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1 constitute capital murder. And they're not all equal,  
2 and that's why the law is set up with those questions.  
3 If we're just sitting there as everyday citizens, we  
4 think it's something horrible and say, well, if they do  
5 that, they ought to get this. But you're applying that  
6 to certain facts.

7 Here we know -- now know to be a juror,  
8 you have to wait till you hear the facts. And  
9 repeating, are you the type of person that could keep  
10 your mind open until you hear the facts?

11 A. Yes.

12 Q. I want to talk about the punishment stage of a  
13 capital murder case, because this is the only time we  
14 get an opportunity to do that. And I don't mean to  
15 slight the guilt/innocence stage, but the punishment  
16 stage is uniquely different than any other punishment  
17 stage in any other type of crime.

18 Before you get to the punishment stage of  
19 the trial, though, you would have first had to have  
20 found someone guilty of capital murder. Otherwise, you  
21 don't get there. Find him not guilty, we go home. But  
22 finding someone guilty of capital murder means, in fact,  
23 you would have found that whoever was on trial that  
24 you're sitting in judgment of intentionally took the  
25 life of another person without any legal justification

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1 during the course of kidnapping. If we prove this  
2 beyond a reasonable doubt, you find the defendant  
3 guilty.

4 The second stage of the trial, the  
5 punishment stage, you may now hear additional evidence  
6 over and above what you heard about the crime itself;  
7 because you're going to hear evidence about the  
8 individual that was not necessarily relevant to whether  
9 or not he committed the crime. It would be entirely  
10 relevant to what punishment he should receive for the  
11 crime you have found him guilty of. So that's where you  
12 get to hear about the background, character, criminal  
13 history, or lack thereof, mental abilities or  
14 disabilities, all kinds of things about the individual,  
15 himself, to aid you in answering these Special Issues so  
16 when you finish with all the evidence, you'll have two  
17 bodies of knowledge.

18 One is the facts of the crime itself that  
19 you can use in answering these issues, and then the  
20 facts about the individual that you can use in answering  
21 this question. Issue Number One then -- and keep in  
22 mind you never get there until you've found someone  
23 guilty of capital murder.

24 A. Uh-huh.

25 Q. Issue Number One says: Do you find from the

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1 evidence beyond a reasonable doubt? Well, that's a clue  
2 right there that it's an automatic answer, if there is  
3 one, and that the reason is that unless we prove to you  
4 beyond a reasonable doubt that there is a probability of  
5 him being a continuing threat to commit future acts of  
6 violence, you answer no, just like the automatic answer  
7 being at guilt/innocence was not guilty unless and until  
8 we prove to you beyond a reasonable doubt that he's  
9 guilty. Okay. And that's the only kind of automatics  
10 that are going to be. The automatic of fact is always  
11 going to be to the benefit of the defendant.

12 So, the burden of proof is on us to prove  
13 beyond a reasonable doubt that there is a probability.  
14 Doesn't say a possibility, because anything is possible.  
15 It's possible to win the lottery tomorrow night. It's  
16 very unlikely, but it's possible. And it doesn't say  
17 certainty. It says probable, which is more likely than  
18 not.

19 So, is there a probability, or more likely  
20 than not, that this person who we've found guilty of  
21 capital murder, and after having heard about his  
22 criminal history, or lack thereof, and his character and  
23 background, is there a likelihood that he would commit  
24 criminal acts of violence? Doesn't have to be another  
25 murder or capital murder. Could be anything criminal in



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1 nature that constitutes a continuing threat to society.  
2 Some people say, well, if I found a person  
3 guilty of capital murder, I would always think, every  
4 time, that he would be a continuing threat to commit  
5 future acts of violence. Well, I suggest to you that,  
6 first of all, you know that's not what the law says;  
7 because the law says it's for us to prove beyond a  
8 reasonable doubt. And the facts of the case itself may,  
9 in certain circumstances, prove -- in addition to his  
10 guilt -- may also prove he was a continuing threat.

11 There may be the other cases where the  
12 facts prove he was guilty of capital murder, but don't  
13 prove he was a continuing threat to society. Could be  
14 the first time the person's ever been in trouble with  
15 the law. Could have been a choirboy, straight-A  
16 student, Boy Scout-type situation. This is a total  
17 aberration from his life, what he did in that case.

18 On the other extreme, as you say, maybe  
19 people who go in and out of the penitentiary, kind of a  
20 treadmill. They get worse and worse as we go along. So  
21 you have to wait and hear all the facts and  
22 circumstances not only about the crime, but of the  
23 individual; because that could be very influential in  
24 deciding the answer to Issue Number One. Do you have  
25 any problem with that?

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1 A. No.

2 Q. So if I were to tell you someone is guilty of  
3 capital murder, can you tell me what punishment they are  
4 going to receive?

5 A. If they're guilty, it could be either life or  
6 death.

7 Q. Right; and that's correct, either life or  
8 death. And that would depend upon not only the facts of  
9 the crime, but about the individual here. If you answer  
10 that question yes, Issue Number One yes, then the  
11 defendant is going to receive the death penalty. In  
12 Issue Number Two, this question does not start out, Do  
13 you find from the evidence beyond a reasonable doubt?  
14 There is no burden. It asks you to stop now, since  
15 you've already found him guilty, found he's going to be  
16 a continuing threat to commit future acts of violence,  
17 and reevaluate everything we've had so far. Because it  
18 asks you to take into consideration the facts of the  
19 crime, the defendant's character and background.

20 The facts of the crime would be what you  
21 heard at guilt/innocence. Character and background  
22 would be what you heard at punishment, and the  
23 defendant's personal, moral culpability. I like to  
24 refer to it as his personal responsibility. Was he a  
25 getaway driver in this situation, or was he the actual

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1 person who might have killed someone?

2 And then the term, Are there sufficient  
3 mitigating circumstance or circumstances -- sufficient  
4 reasons, if you will -- why this person ought to receive  
5 life as opposed to death? Now what it asks you to do  
6 then is go back and evaluate all the evidence, think of  
7 it in your mind. You weigh it as to whether or not you  
8 think it's mitigating; in other words, give life as  
9 opposed to death.

10 And then you determine if it's mitigating.  
11 Is it sufficiently mitigating to change my answer? If  
12 it is, you change your answer. Answer that question  
13 yes, and he receives a life sentence. If you don't  
14 think the mitigating factors are sufficient, you answer  
15 no and he receives the death penalty. Any problem with  
16 that aspect?

17 A. No.

18 Q. To give you an idea of what they're asking on  
19 Issue Number One, it asks you to go back and examine all  
20 the evidence. Well, you may recall then,  
21 hypothetically, that you had a case where you might have  
22 said, well, I remember hearing during the course of the  
23 crime that we found him guilty of, he was high on drugs  
24 or alcohol.

25 Juror Number 1 may say, I think that's

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1 mitigation towards a life sentence; because when you get  
2 high on drugs or alcohol, you do things you wouldn't  
3 ordinarily do. Juror Number 2 says, I don't think it  
4 should have that effect; because when you get high on  
5 drugs or alcohol, you might go out and commit that same  
6 crime again. Or I've known people high on drugs or  
7 alcohol before, and they didn't go out and commit  
8 capital murder. So what caused this guy to do that?  
9 Must be something more to it than that.

10 Two people looked at the very same  
11 evidence and came up with different opinions. That's  
12 okay; because that's what that question asks you to do,  
13 is for you to look at the evidence, you know, weigh it  
14 in your mind, and you decide what effects it should be.  
15 Any problem with that aspect.

16 A. No.

17 Q. Going back, you say, well, the evidence shows  
18 the person on trial was a young man. I think age ought  
19 to be a mitigating factor. Somebody else may say, I  
20 don't think age has anything to do with it. But you're  
21 examining it and weighing it in your mind and  
22 determining what effects. Same thing about a person's  
23 mental abilities. Maybe he's a special ed student.  
24 Some people think that's mitigating. Some people say, I  
25 know lots of people that are special ed students, and

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1 they don't go out and commit capital murder.

2 All it's asking you to do is go back and  
3 look through all the evidence. It gives you the  
4 opportunity to change the vote from death to life if you  
5 think it's warranted by sufficient mitigating  
6 circumstances. If you don't think it's warranted, then  
7 you don't change. Any problem with that aspect?

8 A. No.

9 Q. As you know, there is no crime where you  
10 automatically get the death penalty. You've got to go  
11 through and make this type of analysis. And even though  
12 the extent -- let's say, okay, you've found someone  
13 guilty of capital murder. Let's say you found on Issue  
14 Number One they're a continuing threat to commit future  
15 acts of violence. Somebody may say, that sounds like  
16 the purpose of the death penalty.

17 But you still have to go to Issue Number  
18 Two. Are there reason or reasons that this person  
19 should receive life as opposed to death? You're  
20 committed to go through and look and see if it's there.  
21 If it is, give effect to it, whatever effect you think  
22 it should have. Any problem?

23 A. No, I understand that more now than what I did  
24 before.

25 Q. So, even if someone is found guilty of capital

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1 medication, it does not create problems?

2 A. I never took medication. I went to counseling  
3 for two years, and I got it under control that way.

4 Q. Being in a situation on a capital murder jury,  
5 you're asked to make a very, very important decision,  
6 probably the most important decision you're going to be  
7 asked to make in your life. Any concern on your part  
8 that would ever cause any kind of a problem?

9 A. No, because it wasn't circumstances like that  
10 that would set it off. It's totally different.

11 Q. Very good. When you go back to the  
12 questionnaire and you were asked to fill out the  
13 questionnaire, there was some agree/disagree statements.  
14 One of the things said, Any person, man or woman, young  
15 or old, who's guilty of capital murder should pay with  
16 their own life. You checked that you agreed with that.

17 Now, somebody could read that and say, any  
18 person -- well, we're all either a man or a woman, and  
19 we're all either young or old. So that means everybody  
20 that's guilty of capital murder should pay with their  
21 own life. Somebody else might read it to be, it doesn't  
22 make me a whole lot of difference whether it's a man or  
23 a woman, if they're young or old, the crime deserves it;  
24 that's what ought to happen to it?

25 A. Yep.

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1 murder, and even if you find Number One, he's a  
2 continuing threat to commit future acts of violence, are  
3 you saying you're still open to Issue Number 2 in going  
4 back and examining that evidence fairly and accurately  
5 and making your decision?

6 A. Yes.

7 Q. Now you indicated, also, you had a brother in  
8 law enforcement?

9 A. Yes.

10 Q. Harris County or somewhere else?

11 A. He was with Montgomery County and with Conroe  
12 Police.

13 Q. Is he still in law enforcement?

14 A. No.

15 Q. Anything about having a brother in law  
16 enforcement that makes you feel akin to the State or  
17 that would keep you from being fair to the defendant?

18 A. No.

19 Q. You also indicated and shared with us that  
20 you've had panic disorders before?

21 A. Yes.

22 Q. And we have a friend of ours that's a D.A. who  
23 suffers from the same situation; and under medication,  
24 that's not a problem. And that's what I understand  
25 through your questionnaire, that treated with

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1 Q. What is your thought?

2 A. The second one, it doesn't matter; male,  
3 female, young, old. After going through the process, I  
4 think whatever the circumstances are --

5 Q. Right. There was another that said, Do you  
6 feel that the death penalty is used too often or too  
7 seldom? You said, Too seldom. Too many murders get a  
8 life sentence, which usually gets them out of prison in  
9 twenty years or less.

10 Now you know the Judge told you it's forty  
11 years, day for day. So if this defendant, or any other  
12 defendant, would be sentenced to life imprisonment for  
13 capital murder, it would be 2039 before they would be  
14 eligible to be considered for parole. I assume now that  
15 you know it's not going to be twenty years, that that  
16 would not affect your decision on any of these  
17 questions.

18 A. No.

19 Q. And, of course, there is a question there that  
20 says, The death penalty is appropriate for every  
21 intentional murder. Of course, that's the only kind of  
22 murders there is, intentional murders. There is not an  
23 accidental murder or self-defense murder; but you know  
24 now for the offense of murder, the death penalty is not  
25 applicable. It's murder plus some other type of crime.

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1 Any problem following that aspect of it?

2 A. No.

3 Q. Let's say I were to ask you, tell me a reason  
4 why I would want you to be -- being the State of Texas  
5 is seeking the death penalty -- why I would want you as  
6 a juror?

7 A. I wouldn't say just you. I would say I think  
8 I'm very impartial and I'm open, and I won't come into a  
9 trial and presume somebody's guilty. I think it's the  
10 job of the defense to give the person a right to a fair  
11 trial and the prosecutor to find out the truth for the  
12 truth to come out.

13 Q. Okay. Two things in that regard. You're  
14 right. It is the defense's job to give the defendant a  
15 fair trial, and I thought you were going to say to prove  
16 something. And you didn't say that, but it brings up a  
17 point. The burden never shifts to this side of the  
18 table.

19 Now you might go to this second question,  
20 Issue Number Two, reasons why the defendant ought to  
21 receive life as opposed to death. And logic would  
22 indicate to me, I would expect logically they're going  
23 to come up and try to convince me of that, that he ought  
24 to get life as opposed to death. But the law doesn't  
25 require me producing that evidence. That evidence might

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1 have come from all kinds of things. May come from  
2 medical records we introduced into evidence. It may  
3 come from school records. It could come from anything.

4 There is no burden for them to present  
5 evidence, and there is no burden for them to do  
6 anything. The burden is always on us. And if we don't  
7 meet our burden, you would have to follow the  
8 appropriate aspect of the law. If we do meet our  
9 burden, you have to follow the appropriate aspects of  
10 the law. But you need to understand, there is no burden  
11 on their side to call witnesses. Defendant doesn't have  
12 to testify. They don't have to bring anyone in. If  
13 they do, you have to weigh it like you would any other  
14 evidence.

15 Now our burden is to prove the case beyond  
16 a reasonable doubt. I suggest to you I could never  
17 prove a case beyond all doubt or a hundred percent  
18 certainty. I just can't do that. And there will always  
19 be questions in someone's mind, almost in every criminal  
20 case, that may not get resolved. The issue is, has the  
21 State proven beyond a reasonable doubt that the  
22 defendant is guilty, as charged in the indictment? If  
23 that is proven beyond a reasonable doubt, you find the  
24 defendant guilty. Do you have any question why a  
25 defendant doesn't testify? Because as long as you don't

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1 use that evidence or talk about it in considering your  
2 deliberations, there still may be something in your  
3 mind.

4 Or you may ask, Why didn't the State call  
5 this witness that I'd like to have heard from? Well,  
6 it's fine. You may have wondered about that. But if  
7 the State proves its case beyond a reasonable doubt, if  
8 we did, you'd have to find the person guilty. I  
9 understand it's a search for the truth, but there may  
10 still be some unanswered questions. There is going to  
11 be some unanswered questions that will go on for a time.  
12 The issue is, did we prove our case beyond a reasonable  
13 doubt? Any problem with that aspect?

14 A. Nope.

15 Q. Thank you, ma'am. I appreciate your time.  
16 I'll pass you.

17 THE COURT: Mr. Hill.

18 VOIR DIRE EXAMINATION

19 BY MR. HILL:

20 Q. I can't see you. As I'm looking at your  
21 questionnaire, a couple of things pop out at me that I  
22 think I should touch base on with you. Number 46 asks  
23 whether a person's use or sale of drugs would prevent  
24 them from having defenses commonly relied upon by other  
25 people that might not be using drugs. And you said,

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1 Everyone has a right to a fair trial. What does that  
2 mean to you, personally? And why would it be important  
3 for everyone to have a fair trial?

4 A. Well, because you have to be proven by somebody  
5 else, just like it's the State's -- that's what they  
6 have to prove that you did something. You don't have to  
7 be the one that says he is -- you don't have to come out  
8 and say, I didn't do it. But as far as everybody,  
9 that's the way our country is run. You have a right to  
10 come out and try to show your innocence, if you are  
11 innocent.

12 Q. Let me ask you something. What about cases  
13 that you hear about? And maybe you're hearing about  
14 them as the case is being shown on TV or something.  
15 But think of the most horrific case you can think of.  
16 Have there ever been times when you thought, why is this  
17 person then having a trial? Why even have a trial?  
18 The facts are so obvious, the facts are so heinous.  
19 Would it still be important in those kinds of cases to  
20 have a fair trial?

21 A. Yes, or there would be too many people being  
22 thrown in jail and stuff for something they might not  
23 have committed. I think there has to be something.

24 Q. You're comfortable then with the concept that  
25 the State has the burden of proof, and that if you and

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1 eleven other people sit, you have to listen to all of  
2 the evidence. If you don't believe the State has met  
3 their burden, would you be comfortable entering into a  
4 finding with eleven other people that says the defendant  
5 is not guilty?

6 A. Yes.

7 Q. You mentioned about that the State should be  
8 seeking the truth or be able to establish the truth. Is  
9 there a difference in your mind between a person being  
10 found not guilty and a person being innocent, or are the  
11 two the same thing?

12 A. That's kind of enough.

13 Q. I'm not trying to trick you. I'm trying to  
14 make some distinction that a jury might have to be  
15 called upon to make.

16 A. Right.

17 Q. Innocence, to me, is really a moral term. If a  
18 person is truly innocent, that means they had nothing to  
19 do with the committing of a crime, whatever that crime  
20 might be. Either they weren't there; or if they were  
21 there, they had absolutely nothing to do with it. Guilt  
22 beyond a reasonable doubt is a legal phrase or legal  
23 term that places the burden on the State. So you could  
24 have cases where the State has presented a lot of  
25 evidence, and the jury may have a considerable dispute

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1 penalty in today's society?

2 A. Well, I think the mitigating circumstances that  
3 we've talked about would come into play, as far as we  
4 talked about the mental problems, or maybe abusive  
5 parents, or something like that, different circumstances  
6 that might come into play. Now that would maybe help  
7 you to understand why this happened, why this person  
8 killed somebody, that, you know, they need to be  
9 punished for it. They need to pay their price. But  
10 maybe life isn't the best answer for that at all, you  
11 know; meaning, to take their life isn't the best answer.

12 Q. You know, many times we hear people getting  
13 quite upset when they read in the paper about the  
14 punishment stage of a capital murder trial. And the  
15 defense lawyer might be producing evidence about a  
16 person's background, a person's upbringing, whatever the  
17 facts might be, whatever the circumstances might be.

18 And people say, oh, yeah, he had a bad  
19 childhood. That excuses him from killing somebody. Do  
20 you understand if you were at the punishment stage of a  
21 capital murder trial, you have not excused the conduct.  
22 You have found them guilty of capital murder. And what  
23 do you think is the best thing that could happen at that  
24 point, having been found guilty? What is the best  
25 possible outcome?

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1 as to whether or not the State has proven a case beyond  
2 a reasonable doubt.

3 Some people may be saying, I think he was  
4 involved in this. It's not a question of, quote,  
5 "innocence." It's the question of, has the State proven  
6 their case beyond a reasonable doubt? And I always want  
7 to ask you, are you uncomfortable? Jurors are  
8 uncomfortable with the probability, the possibility, the  
9 likelihood of having to serve on a jury and maybe make  
10 those kinds of distinctions. Are you okay with that?

11 A. Yes.

12 Q. When I read your questionnaire -- I realize we  
13 ask you a lot of questions in a vacuum. You don't know  
14 what the process is, but it usually gives you a feel for  
15 a person's first reaction to the situation. It says,  
16 what are the best arguments for the death penalty? An  
17 eye for an eye. If you take someone's life, not by  
18 accident but premeditated, you should be sent to your  
19 death for payment.

20 My next question is: It said, what are  
21 the best arguments against the death penalty? And you  
22 said, none. Is there any kind of argument you could  
23 make if you were being called upon to make arguments  
24 against the death penalty, or do you just have a very  
25 strong feeling about the appropriateness of the death

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1 A. For the person?

2 Q. For the defendant at that point? To get life  
3 in prison, it's not going to get any better than that.  
4 And the only option to the jurors would be life or  
5 death.

6 A. Right.

7 Q. A lot of jurors have come thinking that, well,  
8 if a person, you know, is found guilty of capital murder  
9 and doesn't get the death penalty, maybe they're going  
10 to get ten years; maybe they're going to be on  
11 probation; it's automatic. If a jury and eleven --  
12 twelve of you say, We, the jury, find the defendant  
13 guilty of capital murder, as charged in the indictment,  
14 that person has a life sentence unless you decide to  
15 give him the death penalty. Nothing better happens.  
16 We want to make sure the jury understands that so there  
17 is no misconception. We don't want people, quite  
18 frankly, going back in the jury room and speculating as  
19 to what might have happened. You know, going in,  
20 that's why the Judge told you life for capital murder is  
21 forty years, day for day; no good time, no early  
22 release, nothing like that.

23 A. Uh-huh.

24 Q. And Mr. McClellan asked you -- because in your  
25 questionnaire you put, They usually get twenty years and

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1 they're out?

2 A. Uh-huh.

3 Q. He said, Now knowing that it's forty years, is  
4 that okay?

5 A. Uh-huh.

6 Q. Do you still feel like forty years is not a  
7 significant amount of time, or would that impact at all  
8 on your decision in answering those two questions?

9 A. No, I think that makes things a lots more clear  
10 to me. And, also, I would say before I came to this  
11 that I would be more of a proponent for the death  
12 penalty than what I am right now.

13 Q. Let's make you a legislator for a day. I don't  
14 know if you've ever been interested in politics. You're  
15 out there and your constituency, and they're wanting to  
16 know what type of laws you could pass in Texas to  
17 address capital murder cases.

18 A. Uh-huh.

19 Q. And you're going to try to tell them every  
20 person that's convicted of capital murder gets the death  
21 penalty, or every person that's convicted of capital  
22 murder gets life in prison automatically, or something  
23 else. Which of those three positions would feel most  
24 comfortable to you, now knowing how the system works?  
25 Would you change the system? Would you make it

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1 mandatory one way or the other, or do you feel okay with  
2 the way it is?

3 A. I feel okay with the way it is.

4 Q. You think it gives you sufficient discretion --

5 A. Yes.

6 Q. -- as a member of the jury, to consider  
7 everything?

8 A. Yes.

9 Q. One of the things that you point out in your  
10 questionnaire is if a person didn't show any remorse.  
11 How might that manifest itself? How might somebody show  
12 remorse, having been found guilty of taking a life  
13 intentionally? How did you -- help me to understand in  
14 some ways how that would be reflected to you.

15 A. As far as being on a jury?

16 Q. Yeah, as you're sitting there looking at the  
17 facts, you're listening to witnesses. And obviously, if  
18 remorse is coming into it, we're talking about the  
19 punishment stage of the trial.

20 A. Right.

21 Q. So if a person is found guilty of capital  
22 murder, you found they intentionally killed someone.  
23 How would remorse kind of show itself? Do your best.  
24 How would a person show remorse?

25 A. Somebody possibly crying would be the first

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1 thing, somebody showing emotion.

2 Q. Let me ask you about this situation. Is it  
3 possible that a person could have remorse for events  
4 having occurred, yet they maintain they didn't feel they  
5 were responsible for the events? Example, you could  
6 have a case where the issue of self-defense comes up.

7 The Judge told you, clearly, if you found  
8 the person acted in self-defense, even if he took  
9 another person's life, that's justified. You have a  
10 right to self-defense. If you're walking out to your  
11 car this afternoon, somebody comes up and takes a knife  
12 out, says, give me your car, and you happen to have a  
13 gun or something and you use it to kill that person,  
14 you're justified. If by chance you should get charged  
15 with some offense of murder, you would have a right to  
16 rely upon self-defense.

17 A. Uh-huh.

18 Q. What happens in those cases where the facts are  
19 a little bit muddled, there is maybe an imperfect  
20 self-defense. It's close, but the jury ultimately  
21 doesn't feel the person did act in self-defense. Do you  
22 see where somebody might be trying to express to the  
23 jury that they felt they were justified in acting the  
24 way they did, but the jury ultimately concluded that  
25 they were not, that under the law, the jury didn't feel

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1 self-defense was an issue. Would a person have to  
2 express some type of remorse in that situation? In  
3 other words, for the circumstances to be --

4 A. I think if somebody was in a situation where if  
5 he had acted in self-defense, but if they were charged  
6 in capital murder, if they weren't the one that actually  
7 killed the person, you would still think you would show  
8 some kind of remorse. Because I think if somebody had  
9 been around somebody and you saw them die, you saw them  
10 get killed, you would still feel sorry that you were a  
11 part of it in some way.

12 Q. That's my whole point. Can you feel sorry you  
13 were part of it, but not offend the jury and say, I felt  
14 like I was justified in taking the person's life?

15 A. I understand what you're saying, and it would  
16 have to be what would come up in the trial, all the  
17 evidence that would come up in the trial to point that  
18 way. I can see if you saw that somebody did seem to act  
19 in self-defense, they're possibly not going to be as  
20 emotional; they're not going to show that much remorse,  
21 because they're thinking, I didn't do anything.

22 Q. That holds them criminally responsible, and the  
23 jury rejects that position.

24 A. Right.

25 Q. Says, no, we've listened to everything, and we

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1 don't think you have that right. Let me go back to this  
2 question about that. We asked whether or not if a  
3 person uses drugs or sells drugs, do they lose their  
4 right to rely upon certain defenses? And that's where  
5 you write, Everybody has a right to a fair trial. Do  
6 you have any difficulty with that? Would that be  
7 something you feel should not be extended to a  
8 defendant? In other words, if somebody were using or  
9 selling drugs -- in other words, they're violating one  
10 law.

11 A. Uh-huh.

12 Q. But the circumstances of a situation show they  
13 were entitled to rely upon self-defense, accident,  
14 whatever the legal issue might be. Are you okay with  
15 the fact somebody could be violating one law, yet it  
16 doesn't take away their right to rely upon other --

17 A. Yes, it's totally separate.

18 Q. For some people, it's real cut and dried. For  
19 them, if you're doing anything wrong, you don't get to  
20 rely on any defense. So tell me, the learning  
21 experience you reflected on, was it a good learning  
22 experience a bad one?

23 A. I think it's bad. I'm going to be  
24 thirty-eight, and I've never been called on jury duty  
25 before, so --

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1 Q. I want to ask this question. But if it's  
2 something that is too personal to answer, that's fine.  
3 But obviously, twelve people are going to be sitting  
4 here. It could be a very stressful situation to go  
5 through jury service. And you indicated at one time you  
6 had some panic attack disorders. Is there anything we  
7 need to know? Because obviously, I'm sitting here  
8 going, well, I'm trying to figure out what it is that  
9 could have set them off, if it was something personal,  
10 if you had ever been involved in a situation where you  
11 had been the victim of a crime or something where this  
12 is going to trigger something, being on a jury like  
13 this?

14 A. No, it was never anything like that.

15 Q. You don't think it has anything to do with your  
16 ability to sit on this case?

17 A. No.

18 Q. You indicated -- you said you were married to a  
19 Muslim at one time. Now you just believe in God, not a  
20 certain religion. That suggests you lead kind of a  
21 moral life, right from wrong, and you do everything  
22 you're supposed to do. You don't go out of your way to  
23 offend the law, right? How long ago were you married to  
24 your husband? How long ago did you divorce?

25 A. I've been divorced seven years.

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1 Q. Was there ever any discussion between you and  
2 him about the difference between Muslim law and other  
3 aspects?

4 A. Yes.

5 Q. Was Muslim law a lot more strict?

6 A. Yes.

7 Q. And absolute?

8 A. Yes.

9 Q. Are you more comfortable outside of that type  
10 of religious feeling --

11 A. Yes.

12 Q. -- than you would have been? Well, the  
13 prosecutor's asked you questions about what -- you know,  
14 whether or not it would be a good choice for them to  
15 choose you as a juror; and we'll give you a opportunity  
16 to tell us whether or not there is anything at all you  
17 can think of, because I can't hope to know you as well  
18 as I'd like in fifteen or twenty minutes. But is there  
19 anything I haven't asked you, something you say, Look,  
20 Mr. Hill, I believe everybody is entitled to a fair  
21 trial. And this is a piece of information about me, or  
22 who I am, that you should know about before you make a  
23 decision of whether I should sit here with eleven other  
24 people?

25 A. I can't really think of anything on the spot.

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1 I know I've always been impartial. I've never taken one  
2 side to anything without knowing first of the facts, you  
3 know. And I don't like to prejudge people.

4 Q. Okay. If this is your first go round on a  
5 jury, you're going to be getting the brass ring the  
6 first time around. Is there anything at all about that  
7 that is uncomfortable to you? And you recognize the  
8 magnitude of the kinds of decisions you're going to be  
9 making?

10 A. Uh-huh.

11 Q. You feel pretty comfortable both sides would be  
12 well-suited in having you sit on this case?

13 A. Yes.

14 Q. Do you have any questions of me?

15 A. No.

16 (Court admonishes juror.)

17 JOSEPH MICHAEL MATHEWS,

18 having been first duly sworn, testified as follows:

19 VOIR DIRE EXAMINATION

20 BY THE COURT:

21 Q. Mr. Mathews, thank you for bearing with us. I  
22 know it's been a long day for you, and it has been for  
23 us, too. I'd ask you, Mr. Mathews, to remember back to  
24 last Friday, the things we talked about then, and to  
25 this morning, the things we talked about. Out of

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1 everything that we have talked about so far, do you have  
2 any questions at all for me?

3 A. No.

4 Q. Is there anything to this point, sir, that we  
5 have not yet addressed that you feel as though we ought  
6 to spend some time talking about because it might have  
7 some bearing on your service as a juror?

8 A. I guess one thing I was going to ask you, I  
9 guess, when we got to this point or whatever, I'm a tax  
10 accountant. And in particular, I do estate taxes. This  
11 is definitely prime time for me. I'm at a new job,  
12 first year. I've got seven contractors under me that  
13 have never worked under my supervision. Is there any  
14 way I could get out of service by that being an excuse,  
15 not being able to serve on this jury, but maybe on  
16 another one?

17 Q. I recognize, and all of us recognize, quite  
18 honestly, Mr. Mathews, that sometimes some things simply  
19 don't fit; and had it been six months later, they would  
20 have fit perfectly. We all recognize that. But bottom  
21 line question is, as I view it, is going to be this:  
22 You will know from what we said that we're going to  
23 spend today. After today we may ask you back a week  
24 from tomorrow, because it's on that day we would have  
25 created our pool. And on that day the lawyers will

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1 determine, within that pool of the forty-five or  
2 forty-eight people, who the twelve jurors are going to  
3 be. So right there, you see, you only have one chance  
4 out of four being a juror. Might not be the best  
5 chance. And I'm not predicting or projecting. That's  
6 up to the lawyers.

7 But if you do become a juror, we're going  
8 to start the testimony in the case on Monday, October  
9 the 4th. It's going to basically be about a 10:00 to  
10 5:00 operation. We know it will last for a week. We're  
11 satisfied it won't last for as much as two weeks. Now  
12 with that in mind, and recognizing also that you have  
13 your own interests to accommodate, too, is it something  
14 you feel you can juggle?

15 A. Yeah, I think so.

16 Q. I mean, it might be an inconvenience. But can  
17 you overcome the inconvenience, and are you willing to  
18 make the effort?

19 A. Oh, I am, I am. I mean, 10:00 to 5:00, that's  
20 workable.

21 Q. We're not going to turn this into an endurance  
22 contest; because if we did that, we couldn't get your  
23 best work product. The bottom line is going to be, if  
24 you did become a juror, would you devote your conscious  
25 effort to listening to the testimony and sorting

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1 through, deciding for yourself, what's believable and  
2 what's not --

3 A. Right.

4 Q. -- and evaluate the evidence and come up with  
5 what you think, intellectually, is honestly the best  
6 answer to come up with based upon the answers?

7 A. I guess my question there is, I'd have at least  
8 a week's notice that I would be on the jury?

9 Q. You will know next Wednesday, and you wouldn't  
10 have to start till the following Monday.

11 A. That's fine. That would be plenty of time.

12 Q. And we did it that way because for a week-long  
13 trial, people need to make adjustments.

14 A. Got you. Not a problem.

15 Q. Anything at all about your personal life -- we  
16 talked about your job -- anything about health or any  
17 circumstance you can think of that would interfere with  
18 your ability to be a juror in this case?

19 A. No.

20 Q. We talked about the laws that can come into  
21 play during the course of a trial like this. Whether  
22 they do or don't will depend upon whether the evidence  
23 and the testimony raises them. But have you heard about  
24 anything so far that causes you to such a degree of  
25 alarm or discomfort that if you were a juror, you would

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1 refuse to follow?

2 A. No.

3 Q. We talked about the fact that before the trial  
4 ever begins, all we're looking for -- I believe I can  
5 speak for the lawyers -- is people who will start the  
6 trial off having no preconceived notions and simply  
7 receive the evidence and evaluate it as you see fit and,  
8 after having sorted through, come up with the answer you  
9 think is the right answer to reach based on the  
10 information the lawyers have given to you. Does that  
11 sound like you?

12 A. Uh-huh.

13 Q. Idea being, at the outset, a not guilty verdict  
14 and guilty verdict are absolutely equally available  
15 options. And whichever one is chosen by the jury, that  
16 decision will be based upon whatever is presented in the  
17 case.

18 A. Yes.

19 Q. Likewise, if a person is found guilty of  
20 capital murder, there are two questions to be answered.  
21 And you know, depending upon how those questions are  
22 answered, a life sentence is going to be imposed or a  
23 death sentence is going to be imposed. Are you  
24 available to answering those two questions at the  
25 punishment phase --

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1 A. Yes.

2 Q. -- based upon how the evidence dictates in your  
3 mind without regard to what result that could cause?

4 A. Right.

5 Q. You spent some time this morning, Mr. Mathews,  
6 trying to find out that the three decisions the jury can  
7 be called upon to make in a capital murder case is, is  
8 the person guilty? If they are guilty, what's the  
9 answer to Question Number One? And what's the answer to  
10 Question Number Two? Each of those decisions are  
11 independent from the other. That is to say, because you  
12 find somebody guilty of capital murder, that doesn't, in  
13 and of itself, dictate to the jury what the answer to  
14 those Special Issues should be. You have evidence in  
15 the case.

16 Likewise, if you answer yes to Question  
17 Number One, that doesn't tell you what the answer to  
18 Question Number Two should be. Because Question Number  
19 Two is asking you something absolutely different than  
20 what Question Number One did. Is he guilty? That's  
21 what he did in the past. Is he a future danger?  
22 That's what you think he might do in the future. And  
23 the third question is, even with all that, is there a  
24 sufficient reason why a life sentence should be imposed  
25 rather than the death sentence? Can you see how each is

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1 remarkably different from the other? That's why once  
2 one question is answered, it's back to the other, as far  
3 as sifting through it or, as the lawyers say, rooting  
4 through it and finding out what it is. Is that  
5 agreeable?

6 MR. MCCLELLAN: I'm ready, Judge.

7 THE COURT: Go ahead.

8 VOIR DIRE EXAMINATION

9 BY MR. MCCLELLAN:

10 Q. Mr. Mathews, my name is Lyn McClellan. Along  
11 with Claire Connors, we represent the State of Texas in  
12 this case. I think we were talking about you need  
13 advance notice about being on the jury. If I were you,  
14 I would go ahead and start making my plans. You filled  
15 out the questionnaire, and you kind of go right down the  
16 middle of the road. We call it a three-three. In  
17 Questions 1 through 5, you answered three on both. And  
18 those are the kind of people who usually end up on the  
19 jury unless you say something really outrageous during  
20 the time I talk with you. So now is your chance to get  
21 off.

22 Now, seriously, I need to talk to you  
23 about a couple of things in your questionnaire. You  
24 indicated that while your chosen religion opposed the  
25 death penalty, being Catholic, you, personally, don't

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1 oppose the death penalty. Can you kind of share some of  
2 your thoughts with regards to that?

3 A. I think it's related to the facts. I mean,  
4 there is reasons. I mean, I couldn't stand here and  
5 say, yes or no, I oppose it. That's just me.

6 Q. It would be dictated by the facts. So you're  
7 open to the concept that if the crime deserves the  
8 punishment, you can assess that type of punishment for  
9 that type of crime, if that's what the law and evidence  
10 showed you?

11 A. Right.

12 Q. We get a lot of Catholics who come through and  
13 fill out the questionnaire. Some people don't know the  
14 Catholic church opposes it, and some of them do. And  
15 some of them say, well, that's going to be my personal  
16 call, and my religion is not going to control that, and  
17 I respect that. So you don't think that would cause you  
18 any problem?

19 A. No.

20 Q. What we're looking for is people who can listen  
21 to the law and the evidence. The Court's going to give  
22 you a charge at the end of the trial on guilt or  
23 innocence. It will set out the law and tell you what  
24 the State has alleged in the indictment, the definition  
25 of murder, the definition of intentional, the definition

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1 of beyond a reasonable doubt.

2 Take that law. You've heard the evidence  
3 from the witness stand, much like where you're sitting  
4 right now. You'll hear evidence from the other  
5 witnesses. You can believe all, some, or none of what a  
6 witness says, take that evidence, apply it to that law,  
7 come up with your decision. You find a person guilty of  
8 capital murder, then that's just the first part, if you  
9 will.

10 Then you go to the punishment stage of  
11 trial if you found someone guilty. If you don't find  
12 him guilty, everybody goes home. That's the end of the  
13 inquiry. At the punishment stage of the trial, you may  
14 hear additional evidence about a defendant's character,  
15 his background, his criminal history or lack thereof,  
16 his mental abilities or disabilities, the kind of  
17 society he was raised in, the kind of surroundings he  
18 was raised up in, his relationship with people that  
19 raised him, and stuff like that, information about the  
20 individual.

21 Because at that stage of the trial, the  
22 focus is on what punishment this individual should  
23 receive for the crime you've already found that he's  
24 guilty of committing. Okay. That evidence would not  
25 have been relevant to whether or not he committed the